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THE GENERAL STATUTES OF NORTH CAROLINA

1969 CUMULATIVE SUPPLEMENT

Completely Annotated, under the Supervision of the Department of Justice, by the Editorial Staff of the Publishers

UNDER THE DIRECTION OF
D. W. PARRISH, JR., S. G. ALRICH, W. M. WILLSON
AND SYLVIA FAULKNER

Volume 2B

Place in Pocket of Corresponding 1965 Replacement Volume of Main Set and Discard Previous Supplement

THE MICHIE COMPANY, LAW PUBLISHERS
CHARLOTTESVILLE, VA.
1969

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Preface

This Cumulative Supplement to Replacement Volume 2B contains the general laws of a permanent nature enacted at the 1965, 1966, 1967 and 1969 Sessions of the General Assembly, which are within the scope of such volume, and brings to date the annotations included therein.

Amendments of former laws are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings. Editors' notes point out many of the changes effected by the amendatory acts.

Chapter analyses show new sections and also old sections with changed captions. An index to all statutes codified herein appears in the Cumulative Supplement to Replacement Volumes 4B and 4C.

A majority of the Session Laws are made effective upon ratification but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after thirty days after the adjournment of the session" in which passed. All legislation appearing herein became effective upon ratification, unless noted to the contrary in an editor's note or an effective date note.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute will be cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P.O. Box 629, Raleigh, N.C. 27602.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Supplement, and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to The Michie Company, Law Publishers, Charlottesville, Virginia.

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Scope of Volume

Statutes:

Permanent portions of the general laws enacted at the 1965, 1967 and 1969 Sessions of the General Assembly affecting Chapters 53 through 62 of the General Statutes.

Annotations:

Sources of the annotations:

- North Carolina Reports volumes 260 (p. 133)-275 (p. 341).
- North Carolina Court of Appeals Reports volumes 1-5 (p. 227).
- Federal Reporter 2nd Series volumes 317-410 (p. 448).
- Federal Supplement volumes 217-298 (p. 1200).
- United States Reports volumes 373-394 (p. 575).
- Supreme Court Reporter volumes 83 (p. 1560)-89 (p. 2151).
- North Carolina Law Review volumes 41 (p. 665)-47 (p. 731).
- Wake Forest Intramural Law Review volumes 2-5.

The General Statutes of North Carolina
1969 Cumulative Supplement

VOLUME 2B

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ARTICLE 1.
Definitions.

§ 53-1. "Bank," "surplus," "undivided profits," and other words defined.

(5) Practical Banker.—The term "practical banker" means an officer or employee of a bank actively engaged in performing duties in managing or supervising or assisting in managing or supervising the conducting of a banking business, including any such banker who is in a retired status from such duties.

(6) Surplus.—The term "surplus" means a fund created pursuant to the provisions of this chapter by a bank from payments by stockholders or from its net earnings or undivided profits which, to the amount specified and by any additions thereto set apart and designated as such, is not available for the payment of dividends, and cannot be used for the payment of expenses or losses so long as such bank has undivided profits.

(7) Time Deposits.—The term "time deposits" means all deposits, the payment of which cannot be legally required within thirty days.

(8) Undivided Profits.—The term "undivided profits" means the credit balance of the profit and loss account of any bank. (1921, c. 4, s. 1; C. S., s. 216(a); 1927, c. 47, s. 1; 1931, c. 243, s. 5; 1945, c. 743, s. 1; 1967, c. 789, s. 21.)

Editor's Note.—The 1967 amendment inserted present subdivision (5) and redesignated former subdivisions (5), (6) and (7) as (6), (7) and (8), respectively.

As the rest of the section was not changed by the amendment, only subdivisions (5) through (8) are set out.

ARTICLE 2.

Creation.

§ 53-2. How incorporated.

(4) The amount of its authorized capital stock, the number of shares into which it is divided, the par value of each share; the amount of capital stock with which it will commence business, which shall not be less than one hundred thousand dollars ($100,000.00) in cities or towns of three thousand population and under; one hundred fifty thousand dollars ($150,000.00) in cities or towns of more than three thousand population and less than ten thousand population; two hundred thousand dollars ($200,000.00) in cities or towns of more than ten thousand population and less than twenty-five thousand population; two hundred fifty thousand dollars ($250,000.00) in cities or towns of more than twenty-five thousand population and less than fifty thousand population; or three hundred thousand dollars ($300,000.00) in cities or towns of more than fifty thousand population; and in addition shall have a paid-in surplus of at least fifty percent (50%) of the authorized capital stock, as hereinbefore set out; the population to be ascertained by the last preceding national census: Provided, that this subdivision shall not apply to banks organized and doing business prior to its adoption. Provided, further, that fractional shares may be issued for the purpose of complying with the requirements of G.S. 53-88. The Banking Commission is hereby authorized and directed to adopt rules and regulations to keep such original required minimum capital funds intact to the end that they remain in and with the bank as a protection for depositors.

(1967, c. 789, s. 1.)

Editor's Note.—

The 1967 amendment added the last sentence of subdivision (4).

As the rest of the section was not changed by the amendment, only subdivision (4) is set out.

§ 53-4. Examination by Commissioner; when certification to be refused; review by Commission. — Upon receipt of a copy of the certificate of incorporation of the proposed bank, the Commissioner of Banks shall at once examine into all the facts connected with the formation of such proposed corporation including its location and proposed stockholders, and if it appears that such corporation, if formed, will be lawfully entitled to commence the business of banking, the Commissioner of Banks shall so certify to the Secretary of State, unless upon examination and investigation he finds that

(1) The proposed corporation is formed for any other than legitimate banking business; or

(2) That the character, general fitness, and responsibility of the persons proposed as stockholders in such corporation and directors, officers, and other managerial officials are not such as to command the confidence of the community in which said bank is proposed to be located; or

(3) That the probable volume of business and reasonable public demand in such community is not sufficient to assure and maintain the solvency of the new bank and of the then existing bank or banks in said community; or

(4) That the name of the proposed corporation is likely to mislead the public as to its character or purpose; or

(5) That the proposed name is the same as the one already adopted or appropriated by an existing bank in this State, or so similar thereto as to be likely to mislead the public.

Upon such certification the Secretary of State shall issue and record such certificate of incorporation.

Notwithstanding any other provisions of this section, the Commissioner of Banks shall not make the certification to the Secretary of State described above until he shall have ascertained that the establishment of such bank will meet the needs and promote the convenience of the community to be served by the bank. Any action taken by the Commissioner of Banks pursuant to this section shall be subject to review by the State Banking Commission which shall have the authority to approve, modify or disapprove any action taken or recommended by the Commissioner of Banks. (1921, c. 4, s. 4; Ex. Sess. 1921, c. 56, s. 1; C. S., s. 217(c); 1931, c. 243, s. 5; 1953, c. 1209, s. 1; 1963, c. 793, s. 1; 1967, c. 789, s. 2.)

Editor's Note.—

The 1967 amendment substituted "he finds" for "he has reason to believe" near the end of the opening paragraph preceding the first numbered subdivision, inserted "than" in subdivision (1), inserted "and directors, officers, and other managerial officials" in subdivision (2), transferred the former last sentence of subdivision (5) to be a separate unnumbered paragraph immediately following subdivision (5) and deleted "to his satisfaction" following "ascertained" in the first sentence of the last paragraph.

§ **53-5. Certificate of incorporation, when certified.**—Upon receipt of such certificate from the Commissioner of Banks, the Secretary of State shall, if said certificate of incorporation be in accordance with law, cause the same to be recorded in his office in a book to be kept for that purpose, and known as the corporation book, and he shall, upon the payment of the organization tax and fees, certify under his official seal two copies of the said certificate of incorporation and probates, one of which shall forthwith be recorded in the office of the register of deeds of the county where the principal office of said corporation in this State shall or is to be located, in a book to be known as the record of incorporations, and the other certified copy shall be filed in the office of the Commissioner of Banks, and thereupon the said persons shall be a body politic and corporate under the name stated in such certificate. The said certificate of incorporation, or a copy thereof, duly certified by the Secretary of State or the register of deeds of the county in which the same is recorded, or by the Commissioner of Banks, under their respective seals, shall be evidence in all courts and places, and shall, in all judicial proceedings, be deemed prima facie evidence of the complete organization and incorporation of the company purporting thereby to have been established. The charter of any bank which fails to complete its organization and open for business to the public within six months after the date of filing its certificate of incorporation with the Secretary of State shall be void: Provided, however, the Commissioner of Banks may for cause extend the limitation herein imposed. (1921, c. 4, s. 5; C. S., s. 217(d); 1931, c. 243, s. 5; 1967, c. 823, s. 3.)

Editor's Note.—

The 1967 amendment, effective Jan. 1, 1968, substituted "register of deeds" for "clerk of the superior court" in two places in this section.

Sections 34 and 35, c. 823, Session Laws 1967, provide: "Sec. 34. It is the intent of this act to establish the office of the register of deeds as the filing office for all of the corporate and related documents now required to be filed with the clerk of the superior court and to transfer all of the duties relating thereto from the clerk of the superior court to the register of deeds. To this end, all relevant sections of the General Statutes of North Carolina not specifically amended by sections 1 through 33 of this act are hereby amended to the same effect.

"Sec. 35. All of the existing records now in the offices of the clerks of the superior court and kept pursuant to the sections of the General Statutes of North Carolina amended by this act shall be transferred from the offices of the clerks of the superior court to the offices of the registers of deeds."

§ 53-6. Payment of capital stock.

Capital Stock Required.—Domestic banks must have, by express provision of this section, capital stock. Cooke v. Outland, 265 N.C. 601, 144 S.E.2d 835 (1965).

§ 53-10. Increase of capital stock.—(a) A corporation doing business under the provisions of this chapter may increase its capital stock as provided by law for other corporations.

(b) A bank may, with the approval of the Commissioner of Banks and by the vote of the holders of at least two thirds of the stock of the particular class or classes of stock entitled to vote on such proposal, amend its charter to authorize an increase in the common stock of the bank in the category of authorized but unissued stock in an amount not to exceed ten percent (10%) of the outstanding shares of such class or classes of stock and shares so authorized shall be deemed released from preemptive rights. Such authorized but unissued stock may be issued from time to time to officers or employees of the bank pursuant to a stock option or stock purchase plan adopted in accordance with this chapter. (1921, c. 4, s. 10; C. S., s. 217(i); 1965, c. 1032; 1967, c. 789, s. 3.)

Editor's Note. — The 1965 amendment deleted former provisions requiring stockholders' approval.

The 1967 amendment designated the former provisions of this section as subsection (a) and added subsection (b).

§ 53-12. Consolidation of banks.—A bank may consolidate with or transfer its assets and liabilities to another bank. Before such consolidation or transfer shall become effective, each bank concerned in such consolidation or transfer shall file, or cause to be filed, with the Commissioner of Banks, certified copies of all proceedings had by its directors and stockholders, which said stockholders' proceedings shall set forth that holders of at least two thirds of the stock voted in the affirmative on the proposition of consolidation or transfer. Such stockholders' proceedings shall also contain a complete copy of the agreement made and entered into between said banks, with reference to such consolidation or transfer. Upon the filing of such stockholders' and directors' proceedings as aforesaid, the Commissioner of Banks shall cause to be made an investigation of each bank to determine whether the interests of the depositors, creditors, and stockholders of each bank are protected, and find such consolidation is in the public interest, and that such consolidation or transfer is made for legitimate purposes, and his consent to or rejection of such consolidation or transfer shall be based upon such investigation. No such consolidation or transfer shall be made without the consent of the Commissioner of Banks. The expense of such investigation shall be paid by such banks. Notice of such consolidation or transfer shall be published for four weeks before or after the same is to become effective, at the discretion of the Commissioner of Banks, in a newspaper published in a city, town, or county in which each of said banks is located, and a certified copy thereof shall be filed with the Commissioner of Banks. In case of either transfer or consolidation the rights of creditors shall be preserved unimpaired, and the respective companies deemed to be in existence to preserve such rights for a period of three years. (1921, c. 4, s. 12; C. S., s. 217(k); 1931, c. 243, s. 5; 1967, c. 789, s. 4.)

Editor's Note.—

The 1967 amendment substituted "investigation" for "examination" in two places in the fourth sentence and in the sixth sentence and inserted "and find such consolidation is in the public interest" in the fourth sentence.

Article 3.

Dissolution and Liquidation.

§ 53-20. Liquidation of banks.

I. GENERAL CONSIDERATION.

Editor's Note.—

For comment on escheat of intangible property, see 2 Wake Forest Intra. L. Rev. 100 (1966).

ARTICLE 5.

Stockholders.

§ 53-42.1. Report of changes in ownership or management. — (a) Whenever a change occurs in the outstanding voting stock of any bank which will result in a change in the control of the bank, the president or other chief executive officer of such bank shall report such facts to the Commissioner of Banks within 24 hours after obtaining knowledge of such change in the control of the bank. As used in this section the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policy of the bank, or a change in the ownership of as much as ten percent (10%) of the outstanding voting stock in any bank.

(b) Whenever a loan or loans are made by a bank, which loan or loans are, or are to be, secured by ten percent (10%) or more of the voting stock of a bank, the president or other chief executive officer of the bank which makes the loan or loans shall report such fact to the Commissioner of Banks within 24 hours after obtaining knowledge of such loan or loans, except when the borrower has been the owner of record of the stock for a period of one year or more, or the stock is of a newly organized bank prior to its opening.

(c) The reports required in subsections (a) and (b) of this section shall contain whatever information is available to inform the Commissioner of Banks of the effect of the transaction upon control of the bank whose stock is involved and shall contain, when known by the person making the report, the number of shares involved, the identity of the sellers (or transferors) and purchasers (or transferees) of record, the identity of the beneficial owners of the shares involved, the purchase price, the total number of shares owned by the sellers (or transferrors) and purchasers (or transferees) of record, both immediately prior to and after the transaction being reported, and the total number of shares owned by the beneficial owners of the shares involved, both immediately prior to and after the transaction being reported, and the identity of borrowers, the name of the bank issuing the stock securing the loan, the number of shares securing the loan and the amount of the loan or loans, and such reports shall be in addition to any reports that may be required pursuant to other provisions of law.

(d) Each bank shall report to the Commissioner of Banks within 24 hours any changes in chief executive officers or directors, including in its report a statement of the past and current business and professional affiliations of new chief executive officers or directors. (1967, c. 789, s. 5.)

ARTICLE 6.

Powers and Duties.

§ 53-43. General powers.

(1) To exercise by its board of directors, or duly authorized officers and agents, subject to law, all such powers as shall be necessary to carry on the business of banking, by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of indebtedness, by receiving deposits, by buying and selling exchange, coin, and bullion, by loaning money on personal security or real and personal property. Such corporation at the time of making loans may not take and receive interest or discounts in advance where the effective rates of interest or discounts collected shall exceed the maximum rates of interest provided under this section, G.S. 24-1.1 and G.S. 24-1.2 if such interest or discount had not been collected in advance.

(6) Maintain separate departments and deposit in its commercial department to the credit of its trust department all uninvested fiduciary funds of cash and secure, under rules and regulations of the State

Banking Commission, all such deposits in the name of the trust department whether in consolidated deposits or for separate fiduciary accounts, by segregating and delivering to the trust department such securities as may be eligible for the investment of the sinking funds of the State of North Carolina, equal in market value to such deposited funds, or readily marketable commercial bonds having not less than a recognized "A" rating equal to one hundred and twenty-five per centum of such deposits. Such securities shall be held by the trust department as security for the full payment or repayment of all such deposits, and shall be kept separate and apart from other assets of the trust department. Until all of such deposits shall have been accounted for to the trust department or to the individual fiduciary accounts, no creditor of the bank shall have any claim or right to such security. When fiduciary funds are deposited by the trust department in the commercial department of the bank, the deposit thereof shall not be deemed to constitute a use of such funds in the general business of the bank and the bank in such instance shall not be liable for interest on such funds. To the extent and in the amount such deposits may be insured by the Federal Deposit Insurance Corporation, the amount of security required for such deposits by this section may be reduced.

The Banking Commission shall have power to make such rules and regulations as it may deem necessary for the enforcement of the provisions of the preceding paragraph, and such authority shall exist and is hereby conferred under the general authority heretofore conferred upon said Commission as well as by this paragraph.

(7) To issue, advise and confirm letters of credit authorizing the beneficiaries thereof to draw upon the institution or its correspondents.

(8) To receive money for transmission.

(9) To become a member of a clearinghouse association and to pledge assets required for its qualification.

(10) To provide for the performance of bank service corporation services, such as data processing services and bookkeeping, subject to such rules and regulations as may be adopted by the State Banking Commission. (1921, c. 4, s. 26; 1923, c. 148, s. 5; C. S., s. 220(a); Ex. Sess. 1924, c. 67; 1925, c. 279; 1927, c. 47, s. 5; 1931, c. 243, s. 5; 1933, c. 303; 1935, c. 81, s. 1; c. 82; 1937, c. 154; 1941, c. 77; 1943, c. 234; 1955, c. 590; 1961, c. 954; 1967, c. 789, s. 6; 1969, c. 541, s. 8; c. 1303, ss. 8, 9.)

Editor's Note.—

The 1967 amendment added subdivisions (7) through (10).

The first 1969 amendment substituted "its" for "it" near the beginning of subdivision (1).

The second 1969 amendment rewrote the second sentence of subdivision (1), deleted former subdivision (6), relating to deduction of interest in advance, and renumbered former subdivisions (7) through (11) as (6) through (10). Session Laws 1969, c. 1303, s. 27, provides that the act shall not affect pending litigation, nor shall it apply to any loan made prior to its effective date. The act was ratified July 2, 1969, and made effective on ratification.

As the rest of the section was not changed by the amendments, only subdivision (1) and present subdivisions (6) through (10) are set out.

It is general banking practice to require that interest be paid in advance. The plaintiff wanted $33,000. Had it been required to pay the interest from that sum, it would have received $7,920 less than it sought to borrow. By adding the interest to the principal of the note, it paid only six percent on the amount borrowed, and this would appear to be the most convenient method of payment. Such a transaction is not tainted with usury. Huski-Bilt, Inc. v. First-Citizens Bank & Trust Co., 271 N.C. 662, 157 S.E.2d 352 (1967).

§ 53-43.3. Officers and employees; share purchase and option plans.—Subject to any applicable rules or regulations of the State Banking Commission, a bank may grant options to purchase, sell or enter into agreements to sell shares of its capital stock to its officers or employees, or both, for a consideration of not less than one hundred percent (100%) of the fair market value of the shares on the date the option is granted, or, if pursuant to a stock purchase plan, eighty-five percent (85%) of the fair market value of the shares on the date the purchase price is fixed, pursuant to the terms of an officer-employee restricted stock option plan or an officer-employee stock purchase plan which has been adopted by the board of directors of the bank and approved by the holders of at least two thirds of the particular class or classes of stock entitled to vote on such proposal and by the Commissioner of Banks. In no event shall the option to purchase such shares be for a consideration less than the par value thereof. Stock options issued hereunder shall qualify as restricted stock options under the Internal Revenue Code of 1954, and corresponding provisions of subsequent United States law. (1967, c. 789, s. 7.)

§ 53-43.4. Issuance of capital notes and debentures. — A bank shall have authority to issue capital notes or debentures, convertible or otherwise, subject to such regulations as the Banking Commission may adopt with respect thereto. (1967, c. 789, s. 7.)

§ 53-43.5. Minors' deposits and safe-deposit agreements.—(a) Deposits.—A bank may operate a deposit account in the name of a minor or in the name of two or more persons, one or more of whom are minors, with the same effect upon its liability as if such minors were of full age. This section shall not affect the law governing transactions with minors in cases outside the scope of this section.

(b) Dealings with Minor.—A bank may lease a safe-deposit box to and in connection therewith deal with a minor with the same effect as if leasing to and dealing with a person of full legal capacity. This section shall not affect the law governing transactions with minors in cases outside the scope of this section.

(c) Safe-Deposit Agreements.—An institution may rent a safe-deposit box or other receptacle for safe deposit of property to, and receive property for safe deposit from, a married minor and spouse, whether adult or minor, jointly. This section shall not affect the law governing transactions with minors in cases outside the scope of this section. (1967, c. 789, s. 7.)

§ 53-43.6. School thrift or savings plan.—(a) A bank may arrange for the collection of savings from school children by the principal of the school, by the teachers, or by collectors, pursuant to regulations issued by the State Banking Commission and approved, in the case of public schools, by the board of education or board of trustees of the city or district in which the school is situated. The principal, teacher, or person authorized by the bank to make collections from the school children shall be the agent of the bank and the bank is liable to the pupil for all deposits made with such principal, teacher, or other authorized person to the same extent as if the deposits were made directly with the bank.

(b) The acceptance of deposits in furtherance of a school thrift or savings plan by an officer, employee or agent of a bank at any school shall not be construed as the establishment or operation of a branch or branch facility. (1967, c. 789, s. 7.)

§ 53-43.7. Safe-deposit boxes; unpaid rentals; procedure; escheats.—(a) If the rental due on a safe-deposit box has not been paid for one year, the lessor may send a notice by registered mail to the last known address of the lessee stating that the safe-deposit box will be opened and its contents stored at the expense of the lessee unless payment of the rental is made within 30 days. If the rental is not paid within 30 days from the mailing of the notice, the box may be opened in the presence of an officer of the lessor and of a notary public who is not a director, officer, employee or stockholder of the lessor. The contents shall be sealed in a package by the notary public who shall write on the outside the name of the lessee and the date of the opening. The notary public shall execute a certificate reciting the name of the lessee, the date of the opening of the box and a list of its contents. The certificate shall be included in the package and a copy of the certificate shall be sent by registered mail to the last known address of the lessee. The package shall then be placed in the general vaults of the lessor at a rental not exceeding the rental previously charged for the box.

(b) Any documents or writings of a private nature, and having little or no apparent value need not be offered for sale, but shall be retained, unless claimed by the owner, for the period specified for unclaimed deposits, after which they may be destroyed.

(c) If the contents of the safe-deposit box have not been claimed within two years of the mailing of the certificate, the lessor may send a further notice to the last known address of the lessee stating that, unless the accumulated charges are paid within 30 days, the contents of the box will be sold at public auction at a specified time and place, or, in the case of securities listed on a stock exchange, will be sold upon the exchange on or after a specified date and that unsalable items will be destroyed. The time, place and manner of sale shall also be posted conspicuously on the premises of the lessor and advertised once in a newspaper of general circulation in the community. If the articles are not claimed, they may then be sold in accordance with the notice.

(d) The balance of the proceeds, after deducting accumulated charges, including the expense of advertising and conducting the sale, together with any money discovered in the box shall be deposited to the credit of the lessee in any account maintained by him, or if none, shall be deemed a deposit account with the bank or trust company operating the safe-deposit facility, or in the case of a subsidiary safe-deposit company, a bank or trust company owning stock therein, and shall be identified on the books of the bank as arising from the sale of contents of a safe-deposit box. When any such deposit is surrendered as unclaimed deposits, the lessor shall also send to the Commissioner a copy of the certificate and an itemized statement of the amount received and the deductions. Any items remaining unsold may be destroyed.

(e) The deposits or proceeds from sales referred to in the preceding paragraph shall be subject to all the provisions of G.S. 116-24, relating to the escheat of bank deposits.

(f) A copy of this section shall be printed on every contract for rental of a safe-deposit box. (1967, c. 789, s. 7.)

§ **53-46. Limitations on investments in securities.**—The investment in any bonds or other debt obligations of any one firm, individual, or corporation, unless it be the obligations of the United States, or agency thereof, or other obligations guaranteed by the United States Government, State of North Carolina, or other state of the United States, or of some city, town, township, county, school district, or other political subdivision of the State of North Carolina, shall at no time be more than twenty percent (20%) of the unimpaired capital and permanent surplus of any bank to an amount not in excess of two hundred and fifty thousand dollars ($250,000.00); and not more than ten percent (10%) of the unimpaired capital and permanent surplus in excess of two hundred and fifty thousand dollars ($250,000.00). (1921, c. 4, s. 27; C. S., s. 220(b); 1927, c. 47, s. 6; 1931, c. 243, s. 5; 1933, c. 359; 1935, c. 199; 1937, c. 186; 1967, c. 789, s. 8.)

Editor's Note.—

The 1967 amendment substituted "debt obligations" for "interest-bearing securities" and "obligations of the United States, or agency thereof, or other obligations guaranteed by the United States Government" for "interest-bearing obligations of the United States, obligations issued under authority of the Federal Farm Loan Act, as amended, or issued by the Federal Home Loan Banks, or the Home Owners' Loan Corporation" near the beginning of the section, and deleted at the end of the section a former proviso relating to certain stocks or bonds lawfully acquired prior to February 25, 1927.

§ 53-48. Loans, limitations of.—The total direct and indirect liability of any person, firm or corporation, other than a municipal corporation for money borrowed, including in the liabilities of a firm, the liabilities of the several members thereof, shall at no time exceed twenty percent of two hundred and fifty thousand dollars, or fractional part thereof, of the unimpaired capital and permanent surplus of the bank and not more than ten percent of the excess of two hundred and fifty thousand dollars of the unimpaired capital and permanent surplus of the bank: Provided, however, that the discount of bills of exchange drawn in good faith against actual existing values, the discount of solvent trade acceptances, or other solvent commercial or business paper actually owned by the person, firm or corporation negotiating the same and the purchase of any notes, the making of any loans, secured by not less than a like face amount of bonds of the United States, or an agency of the United States, or other obligations guaranteed by the United States Government, or State of North Carolina or certificates of indebtedness of the United States, or agency thereof, or other obligations guaranteed by the United States Government, shall not be considered as money borrowed within the meaning of this section: Provided, further, that the limitations of this section shall not apply to loans or obligations to the extent that they are secured or covered by guarantees or by commitments or agreements to take over or purchase the same, made by any federal reserve bank or by the United States or any department, board, bureau, commission or establishment of the United States, including any corporation wholly owned directly or indirectly by the United States. (1921, c. 4, s. 29; 1923, c. 148, s. 6; C. S., s. 220(d); 1925, c. 119, s. 1; 1927, c. 47, s. 7; 1937, c. 419; 1943, c. 204; 1945, c. 127, s. 1; 1967, c. 789, s. 9.)

Editor's Note.—

The 1967 amendment inserted "or an agency of the United States, or other obligations guaranteed by the United States Government" and "or agency thereof, or other obligations guaranteed by the United States Government" in the first proviso.

§ 53-50. Requirement of reserve fund.—(a) A bank which is not a member of the Federal Reserve System shall maintain at all times a reserve fund in an amount equal to at least fifteen percent (15%) of the aggregate amount of its demand deposits and five percent (5%) of the aggregate amount of its other deposits. The amount of the required reserve for each day shall be computed on the basis of average daily deposits covering such biweekly or shorter periods as shall be fixed by regulation of the Banking Commission.

(b) A bank which is a member of the Federal Reserve System shall maintain at all times a reserve fund in accordance with the requirements applicable to a member bank under the laws of the United States.

(c) A bank shall give written notice to the Commissioner of Banks, in the manner prescribed by the Commissioner for such notice, of any deficiency in the reserve fund required under subsection (a) or (b) of this section within three business days after the close of any scheduled averaging period during which such deficiency occurs. (1921, c. 4, s. 31; C. S., s. 220(f); 1967, c. 789, s. 10.)

Editor's Note.—The 1967 amendment rewrote this section.

§ 53-52. Forged check, payment of.

Cross Reference.—As to bank customer's duty to discover and report unauthorized signature or alteration under Uniform Commercial Code, see § 25-4-406.

Receipt of Statement by Agent Who Is Forger Is Receipt by Depositor. — The mailing of a bank statement, with cancelled checks, and the acceptance thereof from the post office by the depositor in person or through his authorized agent, constitutes a receipt by the depositor of such documents within the meaning of this section, and the depositor's failure to give the required notice to the bank, within the specified time thereafter, bars his right of recovery even though the "authorized agent" so receiving the bank statement, is the forger and, again, is unfaithful to his trust by concealing the voucher from the depositor. Nationwide Homes of Raleigh, N.C., Inc. v. First-Citizens Bank & Trust Co., 267 N.C. 528, 148 S.E.2d 693 (1966).

But Rule Does Not Apply Where Account Is Unauthorized and Unknown.—See Nationwide Homes of Raleigh, N.C., Inc. v. First-Citizens Bank & Trust Co., 267 N.C. 528, 148 S.E.2d 693 (1966).

There is no duty upon the depositor to examine endorsements upon his genuine checks. Nationwide Homes of Raleigh, N.C., Inc. v. First-Citizens Bank & Trust Co., 267 N.C. 528, 148 S.E.2d 693 (1966).

Section Is Inapplicable If Checks Are Not Forgeries or Notice Is Given. — If checks drawn by an agent of the depositor are not forgeries, this section has no application; if the checks are forgeries, the defense of the statute is not available to the bank when the depositor gives notice to the bank within the time provided by the statute. Nationwide Homes of Raleigh, N.C., Inc. v. First-Citizens Bank & Trust Co., 267 N.C. 528, 148 S.E.2d 693 (1966) (not deciding whether check signed in name of depositor by one claiming to be agent, but without authority to sign, is a forgery).

Only those checks returned more than sixty days prior to the protest are proper credits under this section. Nationwide Homes of Raleigh, N.C., Inc. v. First-Citizens Bank & Trust Co., 262 N.C. 79, 136 S.E.2d 202 (1964).

This section does not require notice in any specified form. Nationwide Homes of Raleigh, N.C., Inc. v. First-Citizens Bank & Trust Co., 267 N.C. 528, 148 S.E.2d 693 (1966).

Sufficiency of Notice.—It is sufficient that within the time allowed by this section the depositor gives to the bank notice sufficient in content to advise the bank that the debits charged to the depositor's account are based upon checks which are "forged." Nationwide Homes of Raleigh, N.C., Inc. v. First-Citizens Bank & Trust Co., 267 N.C. 528, 148 S.E.2d 693 (1966).

Notice to the bank that the entire account is unauthorized and unknown to the person in whose name it is opened necessarily advises the bank that any check charged thereto, which check purports to be drawn in the name of such account holder, was drawn without authority and with fraudulent intent—a forgery within the contemplation of a stipulation that checks drawn on the account were forgeries and not checks or drafts of the plaintiff. Nationwide Homes of Raleigh, N.C., Inc. v. First-Citizens Bank & Trust Co., 267 N.C. 528, 148 S.E.2d 693 (1966).

The burden, etc.—

The burden is on the bank seeking the protection afforded by this section to show delivery of the voucher to the depositor more than sixty days before the claim is made. Nationwide Homes of Raleigh, N.C., Inc. v. First-Citizens Bank & Trust Co., 267 N.C. 528, 148 S.E.2d 693 (1966).

The burden is on a bank, in order to avail itself of the provisions of this section, to show when the checks were returned to the depositor. Nationwide Homes of Raleigh, N.C., Inc. v. First-Citizens Bank & Trust Co., 262 N.C. 79, 136 S.E.2d 202 (1964).

§§ 53-57, 53-58: Repealed by Session Laws 1965, c. 700, s. 2, effective at midnight June 30, 1967.

Cross Reference.—For provisions of the Uniform Commercial Code as to bank deposits and collections, see §§ 25-4-101 to 25-4-504.

§ 53-62. Establishment of branches or tellers' windows.

(b) Any bank doing business under this chapter may establish branches or teller's windows in the cities or towns in which they are located, or elsewhere, after having first obtained the written approval of the Commissioner of Banks, which approval may be given or withheld by the Commissioner of Banks, in his discretion. The Commissioner of Banks, in exercising such discretion, shall take into account, but not by way of limitation, such factors as the financial history and condition of the applicant bank, the adequacy of its capital structure, its future earnings prospects, and the general character of its management. Such approval shall not be given until he shall find (i) that the establishment of such branch or teller's window will meet the needs and promote the convenience of the community to be served by the bank, and (ii) that the probable volume of business and reasonable public demand in such community are sufficient to assure and maintain the solvency of said branch or teller's window and of the existing bank or banks in said community.

(c) Such branch banks shall be operated as branches of and under the name of the parent bank, and under the control and direction of the board of directors and executive officers of said parent bank. The board of directors of the parent bank shall elect a cashier or such other officers as may be required to properly conduct the business of such branch, and a board of managers or loan committee shall be responsible for the conduct and management of said branch, but not of the parent bank or of any branch save that of which they are officers, managers, or committee: Provided, that the Commissioner of Banks shall not authorize the establishment of any branch or teller's window, the capital of whose parent bank is not sufficient in an amount to provide for the capital of at least one hundred thousand dollars ($100,000.00) for the parent bank, and a capital of at least one hundred thousand dollars ($100,000.00) for each branch or teller's window which it is proposed to establish in cities or towns of three thousand population or less; at least one hundred fifty thousand dollars ($150,000.00) in cities or towns whose population exceeds three thousand, but does not exceed ten thousand; at least two hundred thousand dollars ($200,000.00) in cities or towns whose population exceeds ten thousand, but does not exceed twenty-five thousand; at least two hundred fifty thousand dollars ($250,000.00) in cities or towns whose population exceeds twenty-five thousand, but does not exceed fifty thousand; at least three hundred thousand dollars ($300,000.00) in cities or towns whose population exceeds fifty thousand. The provisions of this subsection shall not be retroactive with respect to branches or teller's windows established or approved by the State Banking Commission prior to June 11, 1963. If a bank which hereafter proposes to establish a branch or teller's window is deficient in capital stock as measured by the above set-forth formula, it shall not be necessary for such bank to provide or allocate additional capital for branches or teller's windows established or approved by the State Banking Commission prior to June 11, 1963, until such a time as such bank makes application for an additional branch or teller's window. At that time sufficient capital and surplus must be allocated to bring the parent bank and all branches and teller's windows into compliance with the above requirements. The bank may, at its option, allocate capital stock and unimpaired surplus, or either, to its branches and teller's windows and may determine the proportion of each, or may allocate all capital stock or all unimpaired surplus. In applying this section, population shall be ascertained by the last preceding national census; provided, however, with respect to any branch or teller's windows established or approved by the State Banking Commission before June 11, 1963, population shall be ascertained by the last national census preceding the establishment of such branch.

(e) A bank may discontinue a branch office or teller's window upon resolution of its board of directors or board of managers. Upon the adoption of such a resolution, the bank shall file a certification with the Commissioner of Banks specifying the location of the branch office or teller's window to be discontinued and the date upon which it is proposed that the discontinuance shall be effective. This certificate must state the reasons for the closing of such branch or teller's window and indicate that the needs and conveniences of the community would still be adequately met. Notice stating the intention to discontinue said branch or teller's window shall be published in a newspaper serving such community once a week for four consecutive weeks before any certificate requesting discontinuance is filed with the Commissioner of Banks. No such branch or teller's window may be discontinued until approved by the Commissioner of Banks, who shall first hold a public hearing thereon, if so requested by any interested party.

(f) Any action taken by the Commissioner of Banks pursuant to this section shall be subject to review by the State Banking Commission which shall have the authority to approve, modify or disapprove any action taken or recommended by the Commissioner of Banks. (1921, c. 4, s. 43; Ex. Sess. 1921, c. 56, s. 2; C. S., s. 220(r); 1927, c. 47, s. 8; 1931, c. 243, s. 5; 1933, c. 451, s. 1; 1935, c. 139; 1947, c. 990; 1953, c. 1209, ss. 2, 5; 1963, c. 793, s. 3; 1967, c. 789, s. 11.)

Editor's Note.—

The 1967 amendment substituted "he shall find" for "he shall have ascertained to his satisfaction' near the beginning of the last sentence of subsection (b), substituted "or" for "and" following the word "cashier" near the beginning of the second sentence of subsection (c), inserted present subsection (e), and redesignated former subsection (e) as subsection (f).

As subsections (a) and (d) were not changed by the amendment, they are not set out.

Section construed and applied in First-Citizens Bank & Trust Co. v. Camp, 409 F.2d 1086 (4th Cir. 1969).

"Need and Convenience". — Neither the North Carolina statute nor any decided cases provides any degree of specificity as to the factors, proof of which would show the presence or absence of "need and convenience" for a new branch bank. First-Citizens Bank & Trust Co. v. Camp, 409 F.2d 1086 (4th Cir. 1969).

Approval of Branch National Bank.—All statutory law requirements of the State dealing with the establishment of branch State banks must be complied with before a branch national bank can be lawfully approved by the Comptroller of the Currency of the United States. First Citizens Bank & Trust Co. v. Camp, 281 F. Supp. 786 (E.D.N.C. 1968).

Prior Approval of Branch by Comptroller of Currency Not Required. — Assuming arguendo that this section demands as a condition precedent to the approval of a branch, an ascertainment of need and convenience, with discretion in decision nevertheless always retained by the Commissioner of Banks, this command has not been extended to the Comptroller of the Currency of the United States by the National Banking Act. First Nat'l Bank v. Saxon, 352 F.2d 267 (4th Cir. 1965).

§ 53-67. Boards of directors, banks controlled by. — The corporate powers, business, and property of banks doing business under this chapter shall be exercised, conducted, and controlled by its board of directors, which shall meet at least quarterly. Such board shall consist of not less than five directors, to be chosen by the stockholders, and shall hold office for one year, and until their successors are elected and qualified. The annual meeting of stockholders for the election of directors shall be held at such time as may be designated by the charter or the bylaws of the bank but shall be held not later than the thirty-first day of March in each year. In addition to the foregoing powers relating to the fixing of the number and the election of directors, the stockholders of a bank, at any stockholders' meeting, special or annual, may authorize not more than two additional directorships which may be left unfilled and to be filled in the discretion of the directors of the institution during the interval between such stockholders' meetings. (1921, c. 4, s. 48; C. S., s. 220(w); 1925, c. 170; 1965, c. 188; 1967, c. 789, s. 12.)

Editor's Note.—

The 1965 amendment substituted the present third sentence for one providing for holding the annual meeting during the month of January.

The 1967 amendment added the last sentence.

§ 53-77.2. Additional provision for operation of banks on five-day week basis.

(g) After a five-day week basis has been ordered pursuant to this section with respect to any bank or banks, the above procedure shall be applicable with respect to any subsequent request to revert to a six-day week basis, and such reversion may be ordered by the Commissioner if he shall find that the best interest of the commercial banks and the public will be served by a six-day week for commercial banks.

(h) This section shall not replace or be in lieu of the provisions of G.S. 53-77.1 but shall constitute an additional provision relating to the operation of banks on a five-day week basis. (1957, c. 358; 1967, c. 789, s. 13.)

Editor's Note.—The 1967 amendment inserted present subsection (g) and redesignated former subsection (g) as subsection (h).

As the rest of the section was not changed by the amendment, only subsections (g) and (h) are set out.

ARTICLE 7.

Officers and Directors.

§ **53-84. Depositories, designated by directors.**—By resolution of the board of directors, other banks organized under the laws of this State, or of another state, or of the National Banking Act of the United States, shall be designated as depositories or reserve banks in which a part of such bank's reserve shall be deposited, subject to payment on demand. A copy of such resolution shall, upon its adoption, be forthwith certified to the Commissioner of Banks and the depository so designated shall be subject to the approval of the Commissioner of Banks. For causes which he may deem adequate, the Commissioner of Banks shall have authority at any time to withdraw such approval.

A bank may deposit funds in a bank of a foreign country, but such deposits shall not constitute any part of its reserve as defined in G.S. 53-51. (1921, c. 4, s. 55; C. S., s. 221(g); 1931, c. 243, s. 5; 1967, c. 789, s. 14.)

Editor's Note.—

The 1967 amendment added the second paragraph.

§ **53-85. Stockholders' book.**

Cited in Cooke v. Outland, 265 N.C. 601, 144 S.E.2d 835 (1965).

§ **53-91. Officers and employees may borrow, when.**—No officer or employee of a bank, nor a firm or partnership of which such officer or employee is a member, nor a corporation in which such officer or employee owns a controlling interest, shall borrow any amount whatever from the bank of which he is an officer or employee, except upon good collateral or other ample security or endorsement; and no such loan shall be made until the same has been approved by a majority of the board of directors and a resolution, duly entered upon the minutes of the board of directors and signed by them, showing the amount of the loan, the directors approving the same and a brief description of the security upon which said loan is made; and a certified copy of such resolution shall be attached to the instrument evidencing the indebtedness: Provided, however, this section shall not apply to directors who are neither officers nor employees of the bank; provided, further, that it shall not be necessary to require collateral or other security with respect to loans, the total of which to an individual borrower, does not exceed twenty-five hundred dollars ($2500.00) made pursuant to this section; provided, further, that in no event shall a loan in excess of forty-five thousand dollars ($45,000.00) be made by any bank to any officer of such bank. (1921, c. 4, s. 62; C. S., s. 221(n); 1925, c. 119, s. 2; 1927, c. 47, s. 12; 1967, c. 789, s. 15; 1969, c. 41.)

Editor's Note.—

The 1967 amendment added the second and third provisos.

The 1969 amendment substituted "forty-five thousand dollars ($45,000.00)" for "twenty-five hundred dollars ($2500.00)" in the third proviso.

ARTICLE 8.

Commissioner of Banks and Banking Department.

§ **53-92. Appointment of Commissioner of Banks; State Banking Commission.**—On or before April first, one thousand nine hundred and thirty-one, after the ratification of this section, and quadrennially thereafter, the Governor, with the advice and consent of the Senate, shall appoint a Commissioner of Banks who shall hold his office for a term of four years or until his successor has been appointed and has qualified, subject, however, to the provisions herein made as to his removal. The Commissioner of Banks shall, before entering upon the discharge of his duties, enter into bond with some surety company authorized to do business in the State of North Carolina, in the sum of not less than fifty thousand dollars, conditioned upon the faithful and honest discharge of all duties and obligations imposed by statute upon him. Such bond shall be made as part of the blanket bond of State officers and employees provided for in G.S. 128-8.

The State Banking Commission, which has heretofore been created, shall hereafter consist of the State Treasurer, who shall serve as an ex officio member thereof, and twelve members who shall be appointed by the Governor. Not more than five members of the said Commission shall be practical bankers, and the remainder of the membership of the said Commission shall be selected so as to fully represent the consumer, industrial, manufacturing, professional, business and farming interests of the State. At least two members shall be selected primarily as representative of the borrowing public, and they shall have no interest in any regulated financial institution other than as a depositor or borrower and shall not be primarily engaged in any business involving retail credit sales. The terms of office of the two additional members who are now to be appointed shall expire on the first day of April, 1957, and thereafter their successors shall be appointed by the Governor for terms of four years each and shall serve until their successors are appointed and qualified. One member shall be appointed for a four (4) year term commencing April 1, 1961, and his successor shall be appointed quadrennially thereafter. Successors to members whose terms expired on the first of April, 1953, shall be filled by the Governor for the unexpired portion of the four-year terms which began on said date. Members of the Commission whose present terms expire on the first day of April, 1955, shall continue in office until the expiration of their respective terms and until their successors are appointed and qualified. The two members appointed pursuant to the action of the 1969 General Assembly shall serve until April 1, 1973, and their successors shall serve for four-year terms as is hereinafter provided for other members of the Commission. As the terms of office of the appointive members of the Commission expire, their successors shall be appointed by the Governor for terms of four years each. Any vacancy occurring in the membership of the Commission shall be filled by the Governor for the unexpired term. The appointive members of said Commission shall be filled by the Governor for the unexpired term. The appointive members of said Commission shall receive as compensation for their services the same per diem and expenses as is paid to the members of the Advisory Budget Commission, which compensation shall be paid from the fees collected from the examination of banks as provided by law.

The Banking Commission shall meet at such time or times, and not less than once every three months, as the Commission shall, by resolution, prescribe, and the Commission may be convened in special session at the call of the Governor, or upon the request of the Commissioner of Banks. The State Treasurer shall be chairman of the said Commission.

No member of said Commission shall act in any matter affecting any bank in which he is financially interested, or with which he is in any manner connected. No member of said Commission shall divulge or make use of any information coming into his possession as a result of his service on such Commission, and shall not give out any information with reference to any facts coming into his possession by reason of his services on such Commission in connection with the condition of any State banking institution, unless such information shall be required of him at any hearing at which he is duly subpoenaed, or when required by order of a court of competent jurisdiction.

The Commissioner of Banks shall act as the executive officer of the Banking Commission, but the Commission shall provide, by rules and regulations, for hearings before the Commission upon any matter or thing which may arise in connection with the banking laws of this State upon the request of any person interested therein, and review any action taken or done by the Commissioner of Banks.

The Banking Commission is hereby vested with full power and authority to supervise, direct and review the exercise by the Commissioner of Banks of all powers, duties, and functions now vested in or exercised by the Commissioner of Banks under the banking laws of this State; any party to a proceeding before the Banking Commission may, within twenty days after final order of said Commission and by written notice to the Commissioner of Banks, appeal to the Superior Court of Wake County for a final determination of any question of law which may be involved. The cause shall be entitled "State of North Carolina on Relation of the Banking Commission against (here insert name of appellant)." It shall be placed on the civil issue docket of such court and shall have precedence over other civil actions. In the event of an appeal the Commissioner shall certify the record to the clerk of Superior Court of Wake County within fifteen days thereafter. (1931, c. 243, s. 1; 1935, c. 266; 1939, c. 91, s. 1; 1949, c. 372; 1953, c. 1209, ss. 4, 6; 1961, c. 547, s. 2; 1967, c. 789, s. 16; 1969, c. 844, s. 6; c. 920.)

Editor's Note.—

The 1967 amendment rewrote the second sentence of the second paragraph. Section 16, Session Laws 1967, c. 789, provides: "The amendment contained in this section shall not apply to members currently serving under appointments made prior to the effective date of this act, but shall apply to their successors only." The amendatory act was ratified June 15, 1967, and made effective on ratification.

The first 1969 amendment added the last sentence of the first paragraph.

The second 1969 amendment, effective July 1, 1969, substituted "twelve" for "ten (10)" in the first sentence of the second paragraph and added the present third and eighth sentences of the second paragraph.

Quoted in Cooke v. Outland, 265 N.C. 601, 144 S.E.2d 835 (1965).

§ 53-104. Commissioner of Banks shall have supervision over, etc.

Cited in Cooke v. Outland, 265 N.C. 601, 144 S.E.2d 835 (1965).

ARTICLE 9.

Bank Examiners.

§ 53-117. Appointment by Commissioner of Banks. — The Commissioner of Banks, for the purpose of carrying out the provisions of this chapter, shall appoint from time to time such State bank examiners, assistant State bank examiners, clerks and stenographers as may be necessary to make a thorough examination of and into the affairs of every bank doing business under this chapter, as often as the Commissioner of Banks may deem necessary, and at least once each year, provided the Commissioner of Banks may extend this period to 15 months when, in his opinion, an emergency condition exists that necessitates such action. The Commissioner of Banks may at any time remove any person appointed by him under this chapter. (1921, c. 4, s. 72; C. S., s. 223(a); 1931, c. 243, s. 5; 1967, c. 789, s. 17.)

Editor's Note.—

The 1967 amendment added the proviso at the end of the first sentence.

§ 53-122. Fees for examinations and other services.

(6) In the first half of each calendar year, the State Banking Commission shall review the estimated cost of maintaining the office of the Commissioner of Banks for the next fiscal year. If the estimated fees provided for under subdivisions (1) and (2) shall exceed the estimated cost of maintaining the office of the Commissioner of Banks for the next fiscal year, then the State Banking Commission may reduce by uniform percentage the fees provided for in subdivisions (1) and (2) of this section but not in a percentage greater than fifty percent (50%) nor to an amount which will reduce the amount of the fees to be col-

lected below the estimated cost of maintaining the office of the Commissioner of Banks for the next fiscal year. If the estimated fees provided for under subdivisions (1) and (2) shall be less than the estimated cost of maintaining the office of the Commissioner of Banks for the next fiscal year, then the State Banking Commission may increase by uniform percentage the fees provided for in subdivisions (1) and (2) of this section to an amount which will increase the amount of the fees to be collected to an amount at least equal to the estimated cost of maintaining the office of the Commissioner of Banks for the next fiscal year. Such fees shall be reduced whenever a surplus exists which exceeds the estimated cost of operating the office of the Commissioner of Banks for one year, even if such reduction shall result in the collection of a smaller sum than the estimated cost of maintaining the office of the Commissioner of Banks for that year. In no event shall any surplus at the end of any fiscal year resulting from the collection of fees pursuant to this section revert to the general fund. (1921, c. 4, s. 77; C. S., s. 223(f); 1927, c. 47, s. 15; 1931, c. 243, s. 5; 1943, c. 733; 1945, c. 467; 1955, c. 640, ss. 1, 2; 1957, c. 1443, s. 1; 1969, c. 229.)

Editor's Note.—

The 1969 amendment rewrote subdivision (6).

As only subdivision (6) was changed by the amendment, the rest of the section is not set out.

Cited in Northcutt v. Clayton, 269 N.C. 428, 152 S.E.2d 471 (1967).

ARTICLE 10.

Penalties.

§ 53-135. General corporation law to apply.

Quoted in Cooke v. Outland, 265 N.C. 601, 144 S.E.2d 835 (1965).

ARTICLE 11.

Industrial Banks.

§ 53-139. Capital stock.—The amount of capital stock with which any industrial bank shall commence business shall not be less than fifty percent (50%) of that which would be required of a commercial bank under the provisions of G.S. 53-2. (1923, c. 225, s. 4; C. S., s. 225(d); 1967, c. 789, s. 18.)

Editor's Note.—The 1967 amendment rewrote this section.

§ 53-141. Powers.—Industrial banks shall have the powers conferred by paragraphs 1, 2, 3, 5 and 7 of § 55-26, and subdivision (3) of § 53-43, such additional powers as may be necessary or incidental for the carrying out of their corporate purposes, and in addition thereto the following powers:

(1) To discount and negotiate promissory notes, drafts, bills of exchange and other evidences of indebtedness, and to loan money on real or personal security, and to purchase notes, bills of exchange, acceptances or other choses in action, and to take and receive interest or discounts subject to G.S. 53-43 (1).

(2) To make loans and charge and receive interest at rates not exceeding the rates of interest provided in G.S. 24-1.1 and 24-1.2.

(3) To establish branch offices or places of business within the county in which its principal office is located, and elsewhere in the State, after having first obtained the written approval of the Commissioner of Banks, which approval may be given or withheld by the Commissioner of Banks in his discretion. The Commissioner of Banks, in exercising

such discretion, shall take into account, but not by way of limitation, such factors as the financial history and condition of the applicant bank, the adequacy of its capital structure, its future earnings prospects, and the general character of its management. Such approval shall not be given until he shall find

a. That the establishment of such branch or teller's window will meet the needs and promote the convenience of the community to be served by the bank, and

b. That the probable volume of business and reasonable public demand in such community are sufficient to assure and maintain the solvency of said branch or teller's window and of the existing bank or banks in said community.

Provided, that the Commissioner of Banks shall not authorize the establishment of any branch the paid-in capital of whose parent bank is not sufficient in amount to provide for capital in an amount equal to that required with respect to the establishment of branches of commercial banks under the provisions of G.S. 53-62. For the purposes of this paragraph, the provisions of G.S. 53-62 as to the meaning of the word "capital" shall be applicable.

A bank may discontinue a branch office upon resolution of its board of directors or board of managers. Upon the adoption of such a resolution, the bank shall file a certification with the Commissioner of Banks specifying the location of the branch office to be discontinued and the date upon which it is proposed that the discontinuance shall be effective. This certificate must state the reasons for the closing of such branch and indicate that the needs and convenience of the community would still be adequately met. Notice stating the intention to discontinue the said branch shall be published in a newspaper serving said community once a week for four consecutive weeks before a certificate requesting a discontinuance is filed with the Commissioner of Banks. No such branch may be discontinued until approved by the Commissioner of Banks, who shall first hold a public hearing thereon, if so requested by any interested party.

(4) Subject to the approval of the Commissioner of Banks and on the authority of its board of directors, or a majority thereof, to enter into such contract, incur such obligations and generally to do and perform any and all such acts and things whatsoever as may be necessary or appropriate in order to take advantage of any and all memberships, loans, subscriptions, contracts, grants, rights or privileges, which may at any time be available or inure to banking institutions, or to their depositors, creditors, stockholders, conservators, receivers or liquidators, by virtue of those provisions of section eight of the Federal Banking Act of one thousand nine hundred and thirty-three (section twelve B of the Federal Reserve Act as amended) which establish the Federal Deposit Insurance Corporation and provide for the insurance of deposits, or of any other provisions of that or any other act or resolution of Congress to aid, regulate or safeguard banking institutions and their depositors, including any amendments of the same or any substitutions therefor; also, to subscribe for and acquire any stock, debentures, bonds or other types of securities of the Federal Deposit Insurance Corporation and to comply with the lawful regulations and requirements from time to time issued or made by such corporations.

(5) To solicit, receive and accept money or its equivalent on deposit both in savings accounts and upon certificates of deposit.

(6) Subject to the approval of the State Banking Commission, to solicit, re-

ceive and accept money or its equivalent on deposit subject to check; provided, however, no such approval shall be given unless and until such industrial bank meets the capital requirements of a commercial bank as set forth in G.S. 53-2. (1923, c. 225, s. 6; C. S., s. 225(f); 1925, c. 199, s. 1; 1931, c. 243, s. 5; 1935, c. 81, s. 2; 1939, c. 244, ss. 1, 2; 1943, c. 233; 1945, c. 283; 1949, c. 952, ss. 1, 2; 1959, c. 365; 1967, c. 789, s. 19; 1969, c. 1303, ss. 10-12.)

Editor's Note.—

The 1967 amendment rewrote present subdivision (3) and added the proviso to present subdivision (6).

The 1969 amendment rewrote subdivision (1), deleted former subdivision (2), relating to deduction of interest in advance, renumbered former subdivisions (3) through (7) as (2) through (6) and rewrote present subdivision (2). Session Laws 1969, c. 1303, s. 27, provides that the act shall not affect pending litigation nor shall it apply to any loan made prior to its effective date. The act was ratified July 2, 1969, and made effective on ratification.

ARTICLE 12.

Joint Deposits.

§ 53-146. Deposits in two names.

Editor's Note.—

For note on joint bank accounts with the right of survivorship in North Carolina, see 46 N.C.L. Rev. 669 (1968).

ARTICLE 14.

Banks Acting in a Fiduciary Capacity.

§ 53-160. License to do business. — Before any such bank is authorized to act in any fiduciary capacity without bond, it must be licensed by the Commissioner of Banks of the State. For such license the licensee shall pay to the State Banking Commission an annual license fee of two hundred dollars ($200.00), which shall be remitted to the State Treasurer for the use of the Commissioner of Banks in the supervision of banks acting in a fiduciary capacity, insofar as it may be necessary, and the surplus, if any, shall remain in the State treasury for the use of the general fund of the State: Provided, however, that a national bank which has been granted trust powers by the Comptroller of the Currency or his duly authorized agent shall be annually licensed as required in this section and shall be granted a certificate of solvency which will meet the provisions of § 53-162 without examination by the Commissioner of Banks as required in § 53-161. (1945, c. 743, s. 1; 1967, c. 789, s. 20.)

Editor's Note.—The 1967 amendment added the proviso at the end of the section.

ARTICLE 15.

North Carolina Consumer Finance Act.

§ 53-164. Title.

Cross Reference.—As to effect of secured transaction provisions of Uniform Commercial Code, see § 25-9-201.

Cited in Northcutt v. Clayton, 269 N.C. 428, 152 S.E.2d 471 (1967).

§ 53-166. Scope of article; evasions; penalties; loans in violation of article void.—(a) Scope.—No person shall engage in the business of lending in amounts of nine hundred dollars ($900.00) or less and contract for, exact, or receive, directly or indirectly, on or in connection with any such loan, any charges whether for interest, compensation, consideration, or expense, or any other purpose whatsoever, which in the aggregate are greater than permitted by

G.S. 24-1.1, except as provided in and authorized by this article, and without first having obtained a license from the Commissioner. The word "lending" as used in this section, shall include, but shall not be limited to, endorsing or otherwise securing loans or contracts for the repayment of loans.

(1969, c. 1303, ss. 13, 14.)

Editor's Note. — Session Laws 1969, c. 1303, s. 13, effective Aug. 1, 1969, substituted "nine hundred dollars ($900.00)" for "six hundred dollars ($600.00)" near the beginning of the first sentence of subsection (a). Session Laws 1969, c. 1303, s. 14, effective July 2, 1969, substituted "permitted by G.S. 24-1.1" for "six percent (6%) per annum" near the end of the first sentence of subsection (a). Section 27 of the 1969 act provides that the act shall not affect pending litigation, nor shall it apply to any loan made prior to its effective date.

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

All loan agencies subject to the provisions of § 105-88 are not subject to the provisions of the Consumer Finance Act. Section 105-88 applies to all the loan agencies specified therein, irrespective of the amounts which they loan or the interest they charge. Northcutt v. Clayton, 269 N.C. 428, 152 S.E.2d 471 (1967).

And Act Does Not Apply to Insurance Premium Finance Companies. — Had the legislature intended to subject to the provisions of the Consumer Finance Act those who make loans solely to finance insurance premiums, surely it would not have enacted article 4 of chapter 58 in the first instance since it exempts from its provisions those subject to the Consumer Finance Act. The legislature did not deem it necessary for both the Commissioner of Banks and the Commissioner of Insurance to supervise an insurance premium financing company. Northcutt v. Clayton, 269 N.C. 428, 152 S.E.2d 471 (1967).

§ 53-167. Expenses of supervision.

Fee Is in Addition to Privilege Tax.—In addition to the fee required by this section, each licensee under the Consumer Finance Act also pays the $750.00 privilege tax exacted by § 105-88. Northcutt v. Clayton, 269 N.C. 428, 152 S.E.2d 471 (1967).

And Is Intended to Pay Expenses of Supervision.—The fees exacted of insurance premium financiers by § 58-56 and of persons engaged in business under the Consumers Finance Act by this section are intended to pay the necessary expenses of licensing, regulating, and supervising the business. Northcutt v. Clayton, 269 N.C. 428, 152 S.E.2d 471 (1967).

§ 53-168. License required; showing of convenience, advantage and financial responsibility; investigation of applicants; hearings; existing businesses; contents of license; transfer; posting.

(c) Existing Business.—Notwithstanding the provisions of this section, any person, firm or corporation not presently licensed under this article, but holding a license on January 1, 1969, issued pursuant to the provisions of G.S. 105-88, shall upon application within not more than sixty days of the effective date of this subsection, receive a license under this article if the person shall meet the requirements of subdivisions (2) and (3) of subsection (a) of this section, and during such sixty-day period such person shall be deemed a licensee under this article.

(1969, c. 1303, s. 15.)

Editor's Note. — The 1969 amendment rewrote subsection (c). Session Laws 1969, c. 1303, s. 27, provides that the act shall not affect pending litigation, nor shall it apply to any loan made prior to its effective date. The act was ratified July 2, 1969, and made effective on ratification.

As the rest of the section was not changed by the amendment, only subsection (c) is set out.

§ 53-172. Conduct of other business in same office.—No licensee subject to the provisions of this article shall conduct its business as a licensee in an office, or annex to an office, of any other business, but shall maintain an office in which only its business as a licensee shall be conducted. Installment paper dealers as defined in G.S. 105-83, and the collection by a licensee of loans legally made in North Carolina, or another state by another government-regulated lender or lending agency, shall not be considered as being any other business within the meaning of this section. This section shall not be construed as authorizing the collection of any loans or charges in violation of the prohibitions contained in G.S. 53-190. The books, records, and accounts relating to loans shall be kept in such manner as the Commissioner of Banks prescribes as to delineate clearly the loan business from any installment dealer paper transactions. (1961, c. 1053, s. 1; 1967, c. 769, s. 1.)

Editor's Note.—The 1967 amendment inserted "and the collection by a licensee of loans legally made in North Carolina, or another state by another government-regulated lender or lending agency" in the second sentence and inserted the third sentence.

§ **53-173. Maximum rate of charge.** — Every licensee hereunder may contract for and receive charges on any loan of money not exceeding nine hundred dollars ($900.00) in amount repayable in substantially equal consecutive monthly installments as follows:

(1) The charge for payment according to schedule may be computed on the amount of the cash advance for the full term of the contract without regard to the requirement for installment payments at rates not exceeding eighteen dollars ($18.00) per one hundred dollars ($100.00) per annum on that part of the amount of cash advance not exceeding three hundred dollars ($300.00), ten dollars ($10.00) per one hundred dollars ($100.00) per annum on that part of the cash advance exceeding three hundred dollars ($300.00) but not exceeding six hundred dollars ($600.00), eight dollars ($8.00) per one hundred dollars ($100.00) per annum on that part of the cash advance exceeding six hundred dollars ($600.00) but not exceeding nine hundred dollars ($900.00).

(2) On loans of ninety-five dollars ($95.00) or less, a licensee may charge, in lieu of the charges specified in subdivision (1) of this section, at a rate not in excess of one dollar ($1.00) for each five dollars ($5.00) of cash advance to the borrower up to the amount of ninety-five dollars ($95.00) and a period of at least fifteen (15) days must be allowed for repayment of each five dollars ($5.00) cash advance. Such charges shall not be assessed by any subterfuge or device on any loan over ninety-five dollars ($95.00) or on any balance of ninety-five dollars ($95.00) or less when the original loan was greater than ninety-five dollars ($95.00).

(3) The charge for payment according to schedule shall be computed at the time the loan is made and when computed shall be added to the cash advance. A licensee shall compute monthly charges for a period of time less than one year at one twelfth of the annual rate for each loan month and shall compute charges for a period of less than one loan month at one thirtieth of one twelfth of the annual rate for each day. A loan month is that period of time from one date in the month through the corresponding date in the next month. If there is no corresponding date, then the last day of the next month will be used. All payments made on account, except those applied to default or deferment charges, shall be applied to the unpaid installments in the order in which they are due.

(4) The licensee shall not fix a due date of the first installment of any loan contract providing for monthly installments for a term exceeding forty-five (45) actual days from the date of the loan. When the first payment of any such contract may be due on a date beyond a loan month defined above, a licensee will be permitted to make an additional charge for the number of days in excess of thirty (30) or the number of days in excess of one loan month from the date of the loan, whichever is less. The charge for the extra days may be added to the amount of the first installment and shall be excluded in computing any rebate.

(5) Subject to the limitations contained in this article as to maximum rates, the Commission may from time to time, upon the basis of changed conditions or facts, redetermine and refix any such maximum rates of charge, but, before determining or redetermining any such maximum rates, the Commission shall give reasonable notice of its intention to consider doing so to all licensees and a reasonable opportunity to be heard and introduce evidence with respect thereto. The notice herein required may be given by mailing such notice to the offices of the licensees as shown in the records of the Commissioner of Banks. Any such changed maximum rates of charge shall not affect preexisting loan contracts lawfully entered into between any licensee and any borrower.

(6) If, as of an installment due date the payment dates of all unpaid installments are deferred for one or more full months and the maturity of the contract is extended for a corresponding period, the licensee may charge and collect a deferment charge, which shall not exceed that portion of the charge for payment according to schedule originally added to the cash advance attributable under the rule of seventy-eights (78's) or the sum of the digits principle to the first of the deferred monthly installment periods multiplied by the number of months in which no schedule payment has been made or in which no payment is required by reason of the deferment. The Banking Commission may promulgate any further rules and regulations which may be necessary with regard to the provisions of this subdivision. (1961, c. 1053, s. 1; 1969, c. 1303, ss. 13, 17-22.)

Editor's Note. — The 1969 amendment substituted "nine hundred dollars ($900.00)" for "six hundred dollars ($600.00)" in the opening paragraph, inserted "repayable in substantially equal consecutive monthly installments" in the opening paragraph, rewrote subdivision (1), substituted "ninety-five dollars ($95.00)" for "seventy-five dollars ($75.00)" throughout subdivision (2), added the first and last sentences of subdivision (3), added the last sentence of subdivision (4) and added subdivision (6). The substitution of "nine hundred dollars ($900.00)" for "six hundred dollars ($600.00)" in the opening paragraph and the amendments to subdivisions (1) and (2) are effective Aug. 1, 1969; the other amendments to this section are effective July 2, 1969. Session Laws 1969, c. 1303, s. 27, provides that the act shall not affect pending litigation, nor shall it apply to any loan made prior to its effective date.

§ **53-174. Refund.**—When any loan contract is paid in full by cash, a new loan, renewal or otherwise, after three loan months have expired, the licensee shall refund or credit the borrower with that portion of the total charges which shall be due the borrower as determined by schedules prepared under the rule of 78's or sum of the digits principle as follows:

"The amount of the refund or credit shall be at least as great a proportion of the total charges originally contracted for, excluding any adjustment made for a first period of more than one (1) month, as the sum of the consecutive monthly balances of the contract scheduled to follow the date of prepayment bears to the sum of all the consecutive monthly balances of the contract, those sums to be determined according to the payment schedule originally contracted for." If a loan is prepaid in full by cash, a new loan, renewal or otherwise, two loan months or less from the date of the contract, the licensee shall make a pro rata refund of the charges to the borrower or shall credit such amount to the borrower. In computing any required refund, any prepayment made on or before the 15th day following an installment date shall be deemed to have been made on the installment date preceding such prepayment and any prepayment made after the 15th day following an installment date shall be deemed to have been made on the installment date following such installment; provided, such computation shall not result in refunds by the rule of 78's method on loans prepaid three loan months or less from the date of the contract. When loans are prepaid fifteen (15) days or less from the date the loan is made, licensees are authorized in computing refunds to divide the original add-on charge by that figure which represents the number of loan months in the contract. The original add-on charges less the resultant quotient shall constitute the amount of the refund; provided, whenever the resultant quotient is less than two dollars ($2.00), the minimum charge shall be fixed at two dollars ($2.00) or the total original add-on charges, whichever is the lesser. The tender by the borrower, or at his request, of an amount equal to the unpaid balance less the required refund must be accepted by the licensee in full payment of the contract. (1961, c. 1053, s. 1; 1969, c. 1303, s. 14.1.)

Editor's Note. — The 1969 amendment substituted "three" for "two" near the beginning of the first paragraph and near the end of the third sentence in the second paragraph. Session Laws 1969, c. 1303, s. 27, provides that the act shall not affect pending litigation, nor shall it apply to any loan made prior to its effective date. The act was ratified July 2, 1969, and made effective on ratification.

§ 53-175. Default charge.

(b) If there is an unpaid balance on a loan at the maturity date as originally scheduled or as deferred, an additional charge at a rate not to exceed six percent (6%) per annum may be charged on the outstanding balance until the loan is paid in full by cash, a new loan, renewal or otherwise. (1961, c. 1053, s. 1; 1969, c. 1303, s. 23.)

Editor's Note. — The 1969 amendment substituted "as originally scheduled or as deferred" for "of the original contract" near the beginning of subsection (b). Session Laws 1969, c. 1303, s. 27, provides that the act shall not affect pending litigation, nor shall it apply to any loan made prior to its effective date. The act was ratified July 2, 1969, and made effective on ratification.

As subsection (a) was not changed by the amendment, it is not set out.

§ 53-176. Optional rates, maturities and amounts.—In lieu of making loans in the amount, for the term and at the charges stated respectively in G.S. 53-166, 53-173 and 53-180, a licensee may at any time elect to make loans in installments not exceeding five thousand dollars ($5,000.00) and which shall not be repayable in less than six months or more than sixty months and which shall not be secured by first deeds of trust or first mortgages on real estate and which are repayable in substantially equal consecutive monthly payments and to charge and collect interest in connection therewith which shall not exceed an effective rate of fifteen percent (15%) per annum upon the outstanding balance: Provided, however, a minimum charge of ten dollars ($10.00) or one dollar ($1.00) per payment may be agreed to and charged in lieu of interest. The due date of the first monthly payment shall not be more than forty-five days following the disbursement of funds under any such installment loan. A borrower under this section may prepay all or any part of a loan made under this section without penalty. Such election shall be made by the filing of a written statement to that effect by the licensee with the Commissioner and can be terminated by cancellation notice filed by the licensee in writing with the Commissioner.

No individual, partnership, or corporate licensee and no corporation which is the parent, subsidiary or affiliate of a corporate licensee which is making loans under this article otherwise than as authorized specially in this section, shall be permitted to make loans under the provisions of this section. Any corporate licensee or individual or partnership licensee making an election to make loans in accordance with the provisions of this section shall respectively be bound by such election with respect to all of its offices and locations in this State and all offices and locations in this State of its parent, subsidiary or affiliated corporate licensee, or with respect to all of his or their offices and locations in this State. (1961, c. 1053, s. 1; 1969, c. 1303, s. 12.1.)

Editor's Note. — The 1969 amendment rewrote the first sentence and added the second and third sentences. Session Laws 1969, c. 1303, s. 27, provides that the act shall not affect pending litigation, nor shall it apply to any loan made prior to its effective date. The act was ratified July 2, 1969, and made effective on ratification.

§ **53-176.1. Motor vehicle lenders.**—(a) Notwithstanding the provisions of G.S. 53-168, any person, firm or corporation not presently licensed under this article, but holding a license on January 1, 1969, issued pursuant to the provisions of G.S. 105-88, shall upon application within not more than sixty days of July 2, 1969, receive a license under this article as a motor vehicle lender if the person shall meet the requirements of subdivisions (2) and (3) of subsection (a) of G.S. 53-168, and during such sixty-day period, such person shall be deemed a licensee as a motor vehicle lender under this article. Following such sixty-day period, any person applying for a license as a motor vehicle lender shall meet all the requirements of G.S. 53-168. A "motor vehicle lender" shall mean any person, firm or corporation licensed under this article to make loans to borrowers, as authorized in this section, secured by a security interest in a motor vehicle, and whose license shall indicate on the face thereof that such licensee is a motor vehicle lender. A motor vehicle lender is permitted to make loans only under the provisions of this section. No office holding a license under the provisions of this section and making loans secured by motor vehicles may make loans under the provisions of G.S. 53-166, G.S. 53-173, G.S. 53-180, or G.S. 53-141, nor shall such office allow or permit loans under the other provisions of this article to be made on its premises or any connecting premises. All other provisions of this article not inconsistent with this section shall apply to a "motor vehicle lender."

(b) A motor vehicle lender may make loans in any amount at rates not exceeding fifteen dollars ($15.00) per hundred dollars per annum on that part of the cash advance not exceeding five hundred dollars ($500.00) ; eleven dollars ($11.00) per one hundred dollars per annum on that part of the cash advance exceeding five hundred dollars ($500.00) but not exceeding one thousand dollars ($1,000.00) ; and nine dollars ($9.00) per one hundred dollars per annum on that part of the cash advance exceeding one thousand dollars ($1,000.00) but not exceeding fifteen hundred dollars ($1,500.00). Rates on any cash advance in excess of fifteen hundred dollars ($1,500.00) shall not exceed the equivalent of sixteen percent (16%) simple interest per annum on the entire amount of the cash advance, provided, that loans made pursuant to this section shall not exceed the sum of five thousand dollars ($5,000.00) and shall not exceed a term of forty-eight months, and shall be secured solely by motor vehicles. (1969, c. 1303, s. 16.)

Editor's Note.—Session Laws 1969, c. 1303, s. 27, provides that the act shall not affect pending litigation, nor shall it apply to any loan made prior to its effective date. The act was ratified July 2, 1969, and made effective on ratification.

§ **53-179. Multiple office loan limitations.** — A licensee shall not grant a loan in one office to any borrower who already has a loan in another office operated by the same entity or by an affiliate, parent, subsidiary or under the same ownership, management or control, whether partial or complete. This section shall apply to intrastate and interstate operations. A licensee shall take every reasonable precaution to prevent granting loans in violation of this section. Such loans granted inadvertently resulting in a total liability of nine hundred dollars ($900.00) or less, shall be adjusted to the rates applicable under this article to a single loan of equivalent amount, and when the total liability on such loans is in excess of nine hundred dollars ($900.00), interest shall be adjusted to simple interest at six percent (6%) per year on the entire obligation. (1961, c. 1053, s. 1; 1969, c. 1303, s. 13.)

Editor's Note. — The 1969 amendment, effective Aug. 1, 1969, substituted "nine hundred dollars ($900.00)" for "six hundred dollars ($600.00)" in two places in the last sentence. Session Laws 1969, c. 1303, s. 27, provides that the act shall not affect pending litigation, nor shall it apply to any loan made prior to its effective date.

§ **53-180. Time and payment limitation.**—Except as otherwise provided in this chapter, no licensee shall enter into any contract of loan under this article providing for any scheduled repayment of principal more than twenty-five months from the date of making the contract if the cash advance is six hundred dollars ($600.00) or less, nor more than thirty months from the date of making the contract if the cash advance is in excess of six hundred dollars ($600.00). Every loan contract shall require payment of cash advance and charges, as aggregated, in installments which shall be payable at approximately equal monthly intervals. No installment contracted for shall be substantially larger than any preceding installment except as authorized by this article. (1961, c. 1053, s. 1; 1969, c. 1303, s. 24.)

Editor's Note. — The 1969 amendment, effective Aug. 1, 1969, rewrote this section. Session Laws 1969, c. 1303, s. 27, provides that the act shall not affect pending litigation, nor shall it apply to any loan made prior to its effective date.

§ **53-188. Review of regulations, order or act of Commission or Commissioner.**

Cited in State ex rel. North Carolina Util. Comm'n v. Old Fort Finishing Plant, 264 N.C. 416, 142 S.E.2d 8 (1965).

§ **53-189. Insurance.**

(e) Credit Life and Property Loss Insurance.—No licensee shall, directly or indirectly, receive any commission, premium or profit from the sale of credit insurance except when issued in connection with a loan made pursuant to the provisions of this article, nor shall any licensee directly or indirectly receive any commission, premium or profit from the sale of any property loss insurance except on property used as collateral to secure any such loan; provided, where a licensee requires any such insurance, the borrower may, if he chooses, purchase such insurance from a source other than the licensee; provided further, that property loss insurance can be required only on a loan secured by a motor vehicle or improved real estate.

(1969, c. 1303, s. 25.)

Editor's Note. — The 1969 amendment rewrote subsection (e). Session Laws 1969, c. 1303, s. 27, provides that the act shall not affect pending litigation, nor shall it apply to any loan made prior to its effective date. The act was ratified July 2, 1969, and made effective on ratification.

As the rest of the section was not changed by the amendment, only subsection (e) is set out.

§ **53-190. Loans made elsewhere.**—No loan contract made outside this State in the amount or of the value of nine hundred dollars ($900.00) or less for which a greater consideration or charges than are authorized by § 53-173 of this article have been charged, contracted for, or received shall be enforced in this State and every person in anywise participating therein in this State shall be subject to the provisions of this article; provided, that the foregoing shall not apply to loans legally made in another state. No lender licensed to do business under this article may collect, or cause to be collected, any loan made by a lender in another state to a borrower who was a legal resident of North Carolina at the time the loan was made. The purchase of a loan account shall not alter this prohibition. (1961, c. 1053, s. 1; 1967, c. 769, s. 2; 1969, c. 1303, s. 13.)

Editor's Note.—The 1967 amendment added the last two sentences.

The 1969 amendment, effective Aug. 1, 1969, substituted "nine hundred dollars ($900.00)" for "six hundred dollars ($600.00)" near the beginning of the section. Session Laws 1969, c. 1303, s. 27, provides that the act shall not affect pending litigation, nor shall it apply to any loan made prior to its effective date.

§ **53-191. Businesses exempted.** — Nothing in this article shall be construed to apply to any person, firm or corporation doing business under the authority of any law of this State or of the United States relating to banks, trust companies, savings and loan associations, cooperative credit unions, agricultural credit corporations or associations organized under the laws of North Carolina, production credit associations organized under the act of Congress known as the Farm Credit Act of 1933, pawnbrokers lending or advancing money on specific articles of personal property, industrial banks, the business of negotiating loans on real estate as defined in G.S. 105-41, nor to installment paper dealers as defined in G.S. 105-83 other than persons, firms and corporations engaged in the business of accepting fees for endorsing or otherwise securing loans or contracts for repayment of loans. (1955, c. 1279; 1957, c. 1429, s. 8; 1961, c. 1053, s. 1; 1969, c. 1303, s. 26.)

Editor's Note. — The 1969 amendment deleted, near the beginning of the section, a provision exempting any person, firm or corporation engaged solely in the business of making loans of fifty dollars or more secured by motor vehicles. Session Laws 1969, c. 1303, s. 27, provides that the act shall not affect pending litigation, nor shall it apply to any loan made prior to its effective date. The act was ratified July 2, 1969, and made effective on ratification.

Cited in Northcutt v. Clayton, 269 N.C. 428, 152 S.E.2d 471 (1967).

Chapter 53A.

Business Development Corporations.

§ 53A-15. Tax exemptions and credits.

(e) In computing entire net income there shall be allowed as deductions the following items:

(1) All ordinary and necessary expenses paid or accrued during the taxable year.

(2) Rental expense paid or accrued during the taxable year.

(3) All unearned discount and interest paid during the taxable year except interest paid in connection with income exempt from taxation under article 4 of chapter 105 of the General Statutes and except interest deemed excessive under G.S. 105-130.6.

(4) Taxes paid or accrued except taxes based on net income, taxes assessed for local benefit of a kind tending to increase the value of the property assessed and any other taxes not deductible for corporate income tax purposes under division I of article 4 of chapter 105 of the General Statutes.

(5) Dividends received from stock issued by any corporation to the extent provided in G.S. 105-130.7.

(6) Net economic losses to the extent provided in G.S. 105-130.8 and other losses as provided in division I of article 4 of chapter 105 of the General Statutes.

(7) Loans or debts ascertained to be worthless and actually charged off during the taxable year, if connected with business and if the amount has previously been included in gross income in a return under this section; or, in the discretion of the Commissioner of Revenue, a reasonable addition to a reserve for bad debts. Provided, that amounts which are deductible for federal income tax purposes shall be prima facie allowable hereunder.

(8) A reasonable allowance for depreciation and obsolescence to the extent provided for corporation income tax purposes in division I of article 4 of chapter 105 of the General Statutes.

(9) Contributions to religious, charitable, educational, literary and like organizations to the extent provided in subdivision (1) of G.S. 105-130.9.

(10) Contributions to the State of North Carolina, any of its institutions, instrumentalities, agencies, or political subdivisions, and contributions to educational institutions located within North Carolina as provided in subdivision (2) of G.S. 105-130.9.

(11) Reasonable contributions to qualified employees' pension trusts within the taxable year; provided, exemption of any such trust under the federal income tax laws shall constitute prima facie evidence that it is a "qualified employees' pension trust" within the meaning of this subdivision.

(12) Premiums paid upon the purchase of bonds to the following extent:
  a. Amortization of bond premiums on tax-exempt bonds shall be mandatory for all taxpayers. Amortization for the taxable year shall be accomplished by lowering the basis or adjusted basis of the bond with no deduction against gross income for the year.
  b. For purposes of this subsection, the term "bond" means any bond, debenture, note, or certificate or other evidence of indebtedness issued by any corporation and bearing interest and includes any like obligation issued by any government or political subdivision thereof.

(13) Interest upon the obligations of the State of North Carolina or a political subdivision thereof received or accrued during the taxable year. Provided, that the deduction of accrued interest shall be permitted only if the taxpayer has included accrued income in his gross income for the taxable year. Provided further that in the event that any court of competent jurisdiction shall rule that the deduction of the interest of the obligations of the State of North Carolina or a political subdivision thereof from the base of the tax levied by this article violates the Constitution of this State or the Constitution of the United States, such deduction shall be disallowed and such interest shall be included in the entire net income of the taxpayer.

(14) Reasonable payments made to the beneficiaries or to the estate of a deceased employee, paid by reason of the death of the employee to the extent provided for corporate income tax purposes in division I of article 4 of chapter 105 of the General Statutes.

(15) Deduction of accrued expenses, contributions, taxes, rental expense, or interest expense shall be subject to the limitations imposed upon corporate income taxpayers by article 4 of chapter 105 of the General Statutes.

(1967, c. 1110, s. 11.)

Editor's Note.—

The 1967 amendment, effective for taxable years beginning on or after Jan. 1, 1967, rewrote subsection (e).

As the rest of the section was not changed by the amendment, only subsection (e) is set out.

Section 16, c. 1110, Session Laws 1967, provides: "This act shall not affect the liability of any taxpayer arising prior to the effective date of the applicable section hereof."

Chapter 54.

Co-Operative Organizations.

SUBCHAPTER I. BUILDING AND LOAN ASSOCIATIONS, BUILDING ASSOCIATIONS AND SAVINGS AND LOAN ASSOCIATIONS.

Article 2A.

Savings Accounts.

Sec.

54-18.3. Savings accounts authorized; terms of payment and withdrawal.
54-18.4. Reserve fund required.
54-18.5. Commissioner to adopt rules and regulations.

Article 3.

Loans.

54-21.4. Loans for improvements to real property; mobile home financing.

Article 4.

Under Control of Commissioner of Insurance.

54-24.1. Savings and Loan Advisory Board.

Article 7A.

Mutual Deposit Guaranty Associations.

Sec.

54-44.1. Definitions.
54-44.2. Organization of a mutual deposit guaranty association.
54-44.3. Examination and certificate by Commissioner.
54-44.4. Recording of articles of incorporation; certified copies.
54-44.5. Proposed amendments transmitted to Commissioner.
54-44.6. Examination and certificate of amendments.
54-44.7. Recording of amendments; certified copies.
54-44.8. Powers of associations.
54-44.9. Filing of semiannual financial reports.
54-44.10. Annual examination of associations.
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SUBCHAPTER III. CREDIT UNIONS.

Article 9.

Credit Union Division; Administrator of Credit Unions.

54-74. Creation and supervision of division.
54-75. Duties of Administrator.

Article 11.

Powers of Credit Unions.

54-85.1. Conversion from State to federal credit union and from federal to State credit union.
54-89. Ownership and leasing of real estate.

Article 12.

Shares in the Corporation.

54-94. Ownership of shares.

Article 14.

Supervision and Control.

54-105. Corporations organized hereunder subject to Administrator of Credit Unions; rules and regulations.
54-107. Annual examinations required; payment of cost.
54-109. When Administrator of Credit Unions may take possession of credit union business and property.

SUBCHAPTER I. BUILDING AND LOAN ASSOCIATIONS, BUILDING ASSOCIATIONS AND SAVINGS AND LOAN ASSOCIATIONS.

ARTICLE 1.

Organization.

§ **54-2. Method of incorporation; powers.** — (a) It shall be lawful for any persons in any city, town or county of this State, under any name by them to be assumed, to associate for the purpose of organizing and establishing a homestead and building and loan association, and, being so associated, they shall, on complying with this subchapter, be a body politic and corporate, and as such be capable in law to hold and dispose of property, both real and personal; may have and use a common seal; may choose a presiding and other officers; may enact bylaws for the regulation of the affairs of such corporation, and compel the due observance of the same by fines and penalties; may sue and be sued, plead and be impleaded, answer and be answered in any court in this State, and do all acts necessary for the well ordering and good government of the affairs of such corporation, and shall exercise all and singular the powers incident to bodies politic and corporate: Provided, that before any such corporation shall be entitled to the privileges of this subchapter it shall file with the register of deeds of the county where such corporation is designed to act a copy of the certificate of incorporation of such corporation, signed by at least seven members, to be recorded in the office of such register of deeds, and shall pay a tax of twenty-five dollars to the register of deeds, which tax shall be paid over by the register of deeds to the treasurer of the county, to the use of the school fund of the county. The register of deeds shall certify a copy of the charter to the Commissioner of Insurance. The register of deeds shall not issue or record the same until duly authorized to do so by the Commissioner of Insurance as hereinafter provided.

(b) Upon receipt of a copy of the certificate of incorporation of the proposed association, the Commissioner of Insurance shall at once examine into all the facts connected with the formation of such proposed corporation, including its location and proposed stockholders, and if it appears that such corporation, if formed, will be lawfully entitled to commence the business for which it is organized, the Commissioner of Insurance shall so certify to the register of deeds in the county in which organized, who shall thereupon issue and record such certificate of incorporation. But the Commissioner of Insurance may refuse to so certify, if upon examination and investigation he has reason to believe that the proposed corporation is formed for any purpose other than a mutual building and loan business, or that the character, general fitness, and responsibility of the persons proposed as stockholders in such corporation are not such as to command the confidence of the community in which said building and loan association is proposed to be located; or that the public convenience and advantage will not be promoted by its establishment; or that the name of the proposed corporation is likely to mislead the public as to its character or purpose; or if the proposed name is the same as one already adopted or appropriated by an existing association in the same county, or so similar thereto as to be likely to mislead the public.

(c) Upon receipt of such certificate from the Commissioner of Insurance, the register of deeds shall, if said certificate of incorporation be in accordance with law, issue and cause same to be recorded in the records of his office as hereinabove provided. (1905, c. 435, s. 1; Rev., s. 3877; C. S., s. 5170; 1931, c. 73; 1967, c. 823, s. 4.)

Cross References.—

See Editor's note to § 53-5.

Editor's Note.—

The 1967 amendment, effective Jan. 1, 1968, substituted "register of deeds" for "clerk of the superior court" and for "clerk" in subsection (a) and for "clerk of court" in subsections (b) and (c).

By virtue of Session Laws 1943, c. 170, "Commissioner of Insurance" has been substituted for "Insurance Commissioner" throughout the section.

§ **54-6. When to begin business.**—Upon filing the certificate of incorporation with the register of deeds of the county where the principal office of the corporation is located, and with the Commissioner of Insurance, the company shall become a body politic and corporate, and shall be authorized to begin business, when licensed by the Commissioner of Insurance. (Code, s. 2297; Rev., s. 3880; 1907, c. 959, s. 1; C. S., s. 5173; 1967, c. 823, s. 5.)

Cross Reference.—See Editor's note to § 53-5.

Editor's Note. — The 1967 amendment, effective Jan. 1, 1968, substituted "register of deeds" for "clerk of the superior court" near the beginning of the section.

By virtue of Session Laws 1943, c. 170, "Commissioner of Insurance" has been substituted for "Insurance Commissioner" in this section.

§ 54-11. Conversion of building and loan associations into federal savings and loan associations.

(3) At the meeting of the shareholders of such corporation, called and held as above provided, such shareholders may, by affirmative vote of a majority of shareholders present, in person or by proxy, declare by resolution the determination to convert said corporation into a federal savings and loan association. A copy of the minutes of the proceedings of such meeting of the shareholders certified by the president or vice-president and secretary or assistant secretary of the corporation shall be filed in the office of the Commissioner of Insurance of this State within five days after such meeting, and a like copy shall also be filed in the office of the register of deeds of the county in which such corporation has its principal office. Each of said certified copies when so filed shall be presumptive evidence of the holding and the action of such meeting.

(4) Within a reasonable time after the receipt of a certified copy of the minutes of said meeting the Commissioner of Insurance shall either approve or disapprove the same. If the proceedings be approved by him he shall so endorse the certified copy of the minutes in his office, and shall issue a certificate certifying his approval of the conversion and proceedings, and send the same to the corporation. Such certificate shall be recorded in the office of the register of deeds of the county in which the corporation has its principal office, and the original shall be held by the corporation. If the Commissioner disapproves such proceedings he shall mark the certified copy of minutes in his office disapproved and notify the corporation to that effect.

(1967, c. 823, s. 6.)

Cross Reference.—See Editor's note to § 53-5.

Editor's Note. — The 1967 amendment, effective Jan. 1, 1968, substituted "register of deeds" for "clerk of the superior court" in the second sentence of subdivision (3) and the third sentence of subdivision (4).

As the rest of the section was not changed by the amendment, only subdivisions (3) and (4) are set out.

By virtue of Session Laws 1943, c. 170, "Commissioner of Insurance" has been substituted for "Insurance Commissioner" in subdivisions (3) and (4) of this section.

§ 54-12. Conversion of federal association into State association.

(4) Within thirty days after the approval of said proceedings by the board, the officers of said association shall file with the register of deeds of the county where such association is designed to act a copy of the certificate of incorporation of such association, signed by at least seven members, to be recorded in the office of such register of deeds. Such certificate of incorporation shall conform to the provisions of the laws of this State. The register of deeds shall certify a copy of the certificate to the Commissioner of Insurance, and shall not issue or record the same until duly authorized to do so by the Commissioner of Insurance. Upon receipt of a copy of the certificate of incorporation the Commissioner of Insurance shall at once examine into the facts connected with the conversion of such association, and, if it appears that such association if converted will be lawfully entitled to commence business as a building and loan association pursuant to the laws of this State, the Commissioner of Insurance shall so certify to the register of deeds in the county in which the association will be located, who shall thereupon issue and record such certificate of incorporation. Upon the issuance

and recordation of such certificate of incorporation the association shall file with the board a certified copy of same. Thereupon the association shall cease to be a federal savings and loan association and shall be deemed to be converted into a building and loan association under the laws of this State, whose corporate existence shall be deemed then to begin.

(1967, c. 823, s. 7.)

Cross Reference.—See Editor's note to § 53-5.

Editor's Note. — The 1967 amendment, effective Jan. 1, 1968, substituted "register of deeds" for "clerk of the superior court," "clerk" and "clerk of the court" throughout subdivision (4).

As the rest of the section was not changed by the amendment, only subdivision (4) is set out.

By virtue of Session Laws 1943, c. 170, "Commissioner of Insurance" has been substituted for "Insurance Commissioner" in subdivision (4) of this section.

§ 54-12.1. Merger of building and loan associations.

(4) At separate meetings of the shareholders of each of such associations, called and held as above provided, such shareholders representing a majority of the outstanding shares of stock entitled to vote, by affirmative vote of at least two thirds of the shareholders present, in person or by proxy, may declare by resolution the determination to merge into a single association upon terms of the merger agreement as shall have been agreed upon by the directors of the respective associations and as approved by the Commissioner of Insurance. Members of the associations who do not attend the meetings or who do not vote thereat, shall, if the merger is so approved by the members, be deemed to consent to the merger. Upon the adoption of such resolution, a copy of the minutes of the proceedings of such meetings of the shareholders of the respective associations, certified by the president or vice-president and secretary or assistant secretary of the merging associations, shall be filed in the office of the Commissioner of Insurance of this State, within ten days after such meetings, and within fifteen days after the receipt of a certified copy of the minutes of said meetings the Commissioner of Insurance shall either approve or disapprove the same. If the proceedings be approved by him he shall so endorse the certified copy of the minutes in his office, and shall issue a certificate certifying his approval of the merger and send same to each of said associations. Such certificate shall be filed and recorded in the office of the register of deeds of the county or counties in this State in which the respective associations so merged shall have their original certificates of incorporation recorded; provided, that the only fees that shall be collected in connection with the merger of said associations shall be filing and recording fees. When such certificate is so filed, the merger agreement shall take effect according to its terms and shall be binding upon all the members of the associations so merging, and the same shall thence be taken and deemed to be the act of merger of such constituent building and loan associations under the laws of this State, and such record or certified copy thereof shall be evidence of the agreement and act of merger of said building and loan associations and the observance and performance of all acts and conditions necessary to have been observed and performed precedent to such merger. If the Commissioner shall disapprove the proceedings he shall mark the certified copies of the meetings in his office disapproved and notify the associations to that effect.

(1967, c. 823, s. 8.)

Cross Reference.—See Editor's note to § 53-5.

Editor's Note. — The 1967 amendment, effective Jan. 1, 1968, substituted "register of deeds" for "clerk of the superior court" in the fifth sentence of subdivision (4).

As the rest of the section was not changed by the amendment, only subdivision (4) is set out.

By virtue of Session Laws 1943, c. 170, "Commissioner of Insurance" has been substituted for "Insurance Commissioner" in subdivision (4) of this section.

ARTICLE 2.

Shares and Shareholders.

§ **54-14. Different classes of shares; dividends; reserve fund.**—Every building and loan association doing business in this State shall be authorized to issue as many series or classes and kinds of shares and at such stated periods as may be provided for in its charter or bylaws, or by the federal home loan bank and Federal Savings and Loan Insurance Corporation for federal savings and loan associations, subject to such regulations and limitations as the Commissioner of Insurance may prescribe: Provided, the dividends on paid-up stock shall be less than the association is earning, and such stock may have the right to share in the dividends between the rate paid and the earned per centum. Every association shall at all times have on hand and unpledged, investments in obligations of the United States government or the government of the State of North Carolina, or stock in the federal home loan bank, or bonds issued by the federal home loan bank, or on deposit in such bank or banks as may have been approved by a majority of the entire board of directors, an amount equal to at least five per centum of the aggregate amount of paid-up stock outstanding, as shown by the books of the association. When the aggregate of investment or funds in hand or on deposit as herein provided falls below the amount required under this section, the association shall make no new real estate loans until the required amount has been accumulated: Provided, that the refinancing, recasting or renewal of loans previously made, and/or loans made as a result of foreclosure sales under instruments held by the interested building and loan association, shall not be considered as new loans within the meaning of this section. (1905, c. 435, s. 6; Rev., s. 3889; 1907, c. 959, s. 3; 1919, c. 179, s. 3; C. S., s. 5177; 1931, c. 107; 1933, c. 26; 1941, c. 67; 1967, c. 556.)

Editor's Note.—

The 1967 amendment inserted, immediately preceding the proviso to the first sentence, "or by the federal home loan bank and Federal Savings and Loan Insurance Corporation for federal savings and loan associations, subject to such regulations and limitations as the Commissioner of Insurance may prescribe."

ARTICLE 2A.

Savings Accounts.

§ **54-18.3. Savings accounts authorized; terms of payment and withdrawal.**—Notwithstanding any other provisions of law, any building and loan association or savings and loan association incorporated under the laws of this State or any federal savings and loan association having its principal office in North Carolina is authorized to raise capital in the form of such savings deposits or savings accounts as are authorized by its charter or by regulation of the Commissioner of Insurance and may issue such passbooks, time certificates of deposit, or other evidence of savings accounts as are so authorized. Holders of savings accounts and obligors of an association shall to such extent as may be provided by its charter or by regulations of the Commissioner of Insurance, be members of the association, and shall have such voting rights and such other rights as are thereby provided. Except as may be otherwise authorized by the association's charter or regulation of the Commissioner of Insurance in the case of savings accounts for fixed or minimum terms of not less than thirty days, the payment of any savings account shall be subject to the right of the association to require such advance notice, not less than thirty days, as shall be provided for by the charter of the association or the regulations of the Commissioner of Insurance. The payment of withdrawals from savings accounts in the event an association does not pay all withdrawals in full (subject to the right of the association to require notice) shall be subject to such rules and procedures as may be prescribed by the association's charter or by regulation of the Commissioner of Insurance. Savings accounts shall not be subject to check or to withdrawal or transfer on negotiable or transferable order or authorization to the association, but the Commissioner of Insurance may by regulation provide for withdrawal or transfer of savings accounts upon nontransferable order or authorization. To such extent as the Commissioner of Insurance may authorize by regulation or advice in writing, an association may borrow, may give security, and may issue such notes, bonds, debentures, or other obligations, or other securities as the Commissioner of Insurance may so authorize. (1969, c. 449, s. 1.)

§ **54-18.4. Reserve fund required.**—Any capital raised pursuant to the provisions of G.S. 54-18.3 shall be added to the amount of capital raised by the issuance of stock of the association for the purposes of determining the amount of the reserve fund required by G.S. 54-14. (1969, c. 449, s. 2.)

§ **54-18.5. Commissioner to adopt rules and regulations.**—The Commissioner of Insurance shall adopt rules and regulations for the implementation of the authority herein vested in savings and loan associations. (1969, c. 449, s. 3.)

ARTICLE 3.

Loans.

§ **54-21.2. Investments.**—(a) Any building and loan association or savings and loan association incorporated under the laws of this State is authorized to invest any funds on hand, in excess of the demands of its shareholders, in bonds or evidences of indebtedness of the United States government, or guaranteed by it; in bonds or other evidences of indebtedness of the State of North Carolina; in demand or time deposits with such bank or banks as may be approved by a majority of the board of directors; in stock of a federal home loan bank of which it is a member and in any obligations or consolidated obligations of any federal home loan bank or banks; in stock or obligations of the Federal Savings and Loan Insurance Corporation; in stock or obligations of the National Mortgage Association or any successor or successors thereto; in savings accounts of any association operating under the provisions of this section, or in savings accounts of any federal savings and loan association having its principal office within the State, subject to the maximum amounts insured by any federal agency; in stock and obligations of any corporation doing business in North Carolina or of any agency of the State of North Carolina or of the United States where the principal business of such corporation or agency is to make loans for the financing of a college education and other educational loans, provided that each savings and loan association shall determine and be limited to an investment in such stock and obligations which shall not exceed a maximum of one percent (1%) of the total outstanding loans made by each such savings and loan association.

(b) Subject to such regulations and limitations as the Commissioner of Insurance may prescribe, any such association is authorized and permitted to make any loan or investment now or hereafter permitted to be made by any federal savings and loan association by the Congress of the United States, federal home loan bank board and the Federal Savings and Loan Insurance Corporation.

(c) The rights and powers granted to associations by this section shall be deemed supplementary to and not in substitution for any rights and powers heretofore or hereafter granted such associations in their charters or by the laws of this State.

(d) Any savings and loan association incorporated under the laws of this State or any federal savings and loan association whose principal office is in the State of North Carolina, may invest in the capital stock, obligations, or other securities of any corporation organized under the laws of the State of North Carolina when the entire capital stock of such corporation is owned or is to be owned by such savings and loan association. Provided, however, that the original capital stock of such corporation shall aggregate at least three hundred thousand dollars ($300,000.00) from subscriptions and payments by at least 10 of the aforementioned associations; and provided further that no association may own capital stock obligations or other securities of such corporation which in their aggregate exceeds one percent (1%) of the assets of each such savings and loan association, and provided further that not less than one hundred percent (100%) of all the activities of such service corporation shall consist of originating, purchasing, selling and servicing loans or participating interest in loans upon real estate or other investments authorized to be made by savings and loan associations doing business in the State of North Carolina, and performing such clerical, bookkeeping, accounting, statistical, and other such activities, as may be permitted by the Commissoner of Insurance. (1945, c. 189, s. 4; 1959, c. 366; 1967, cc. 580, 653.)

Editor's Note.—

The first 1967 amendment added at the end of subsection (a) the provisions as to stock and obligations of corporations or State or federal agencies whose principal business is to make loans for the financing of a college education or other educational loans; in subsection (b) the amendment substituted "by the Congress of the United States, federal home loan bank board and the Federal Savings and Loan Insurance Corporation" for "whose home office is located in this State."

The second 1967 amendment added subsection (d).

§ **54-21.4. Loans for improvements to real property; mobile home financing.**—(a) Notwithstanding any other provisions of law, any building and loan association or savings and loan association incorporated under the laws of this State or any federal savings and loan association having its principal office in North Carolina is authorized, without being required to take or receive any security, to make:

(1) Any loan not exceeding five thousand dollars ($5,000.00) which is made for the improvement, alteration, repairing and equipping real property, subject to the rules and regulations governing such loans as adopted by the Commissioner of Insurance; provided, however, that the combined total amount of the outstanding loans made under this section and the amount of the outstanding loans made on nonresidential real property as the term "nonresidential real property loan" is defined in the United States Income Tax Regulations section 301.7701-13, shall not exceed 19% of the total amount of the outstanding loans of any savings and loan association making loans under the provisions of this section;

(2) Any loan for the purpose of purchasing or refinancing a mobile home, subject to the rules and regulations governing such loans as adopted by the Commissioner of Insurance.

(b) The loans authorized to be made by savings and loan associations under the provisions of this section shall be subject to such regulations and limitations as the Commissioner of Insurance shall prescribe. (1969, c. 737.)

ARTICLE 4.

Under Control of Commissioner of Insurance.

§ **54-24.1. Savings and Loan Advisory Board.**—(a) There shall be in the Insurance Department a Savings and Loan Advisory Board which shall consist of seven members. The Commissioner shall be a member of the Board and its chairman and executive head. The deputy commissioner of insurance for savings and loan associations shall also be a member of the Board and its vice chairman and act as chairman at times designated by the Commissioner or in the absence of the Commissioner. The remaining five members shall be appointed by the Governor. Of the five members appointed by the Governor, three shall have had experience in management of savings and loan associations. Three members shall be appointed for two years and two for four years, and thereafter all appointments shall be for a term of four years and until a successor has been appointed; in case of a vacancy for any reason, the Governor shall appoint a member to fill the unexpired term of office. The members of the Savings and Loan Advisory Board shall receive no salary but shall be paid for their services seven dollars ($7.00) per diem and their expenses. The Board shall meet in regular session at least once each three months on call of the chairman. Special meetings may be had at any time upon call of the Commissioner or at the request of any two members of the Board. The Board may adjourn its meetings from day to day or until a day certain until all its business has been transacted. The Commissioner or at his designation or in his absence, the deputy commissioner for savings and loan associations, shall keep a record of all proceedings of the Board, which records shall be open to public inspection.

(b) The Savings and Loan Advisory Board shall have power to consider and, by a majority vote of its members present, to make recommendations to the Commissioner upon any matter which may be submitted to the Board.

(c) The Savings and Loan Advisory Board shall within six months after the ratification of this subsection, review the rules, instructions and regulations for savings and loan associations promulgated by the Commissioner of Insurance and make its recommendations to the Commissioner for the approval in whole or in part, change, deletions and amendments of such existing rules, instructions and regulations and thereafter from time to time recommend to the Commissioner such changes, deletions and new rules, instructions and regulations as, in the judgment of the Board, are of such nature and importance to justify such a change. The Board shall recommend to the Commissioner for promulgation by the Commissioner rules, instructions and regulations for public hearings on matters relating to savings and loan associations which shall be used for public hearings where matters affecting savings and loan associations, in the judgment of the Commissioner and of the Board, are of such nature and importance as to justify and require a public hearing. (1967, c. 557.)

Article 7A.

Mutual Deposit Guaranty Associations.

§ **54-44.1. Definitions.**—As used in this article,

(1) "Commissioner" means Commissioner of Insurance of North Carolina.
(2) "Guaranty association" means a mutual deposit guaranty association organized pursuant to this article.
(3) "Institution" means a building and loan association, a savings and loan association or a credit union organized pursuant to article 1 of subchapter I and article 10, subchapter III of this chapter. (1967, c. 1091.)

§ **54-44.2. Organization of a mutual deposit guaranty association.**—Any number of institutions, not less than 10, may become incorporated as a mutual deposit guaranty association without capital stock subject to the limitations prescribed in this article.

Articles of incorporation of a guaranty association shall be filed in the office of the Secretary of State. The Secretary of State shall, upon receipt of such articles, transmit a copy of them to the Commissioner and shall not record them until authorized to do so by the Commissioner. (1967, c. 1091.)

§ **54-44.3. Examination and certificate by Commissioner.** — Upon receipt from the Secretary of State of a copy of the articles of incorporation of a proposed guaranty association, the Commissioner shall at once examine into all the facts connected with the formation of such proposed corporation. In the event such articles of incorporation are correct in form and substance and the examination shows that such corporation, if formed, would be entitled to commence the business of a guaranty association, the Commissioner shall so certify to the Secretary of State.

The Commissioner may refuse to make such certification if upon examination he has reason to believe the proposed corporation is to be formed for any business other than assuring the liquidity of member institutions and guaranteeing deposits therein, if he has reason to believe that the character and general fitness of the incorporators are not such as to command the confidence of the general public or if the best interests of the public will not be promoted by its establishment. (1967, c. 1091.)

§ **54-44.4. Recording of articles of incorporation; certified copies.**—Upon receipt of the certificate provided for in § 54-44.3, the Secretary of State shall record the articles of incorporation of such guaranty association and furnish a certified copy thereof to the incorporators and to the Commissioner. Upon such recordation, such association shall be deemed a corporation. All papers thereafter filed in the office of the Secretary of State relating to such corporation shall be recorded as provided by law and a certified copy forwarded to the Commissioner. (1967, c. 1091.)

§ **54-44.5. Proposed amendments transmitted to Commissioner.**—When any proposed amendments to the articles of incorporation of a guaranty association are filed in the office of the Secretary of State, the Secretary of State shall transmit a copy thereof to the Commissioner and shall not record such amendments until authorized to do so by the Commissioner. (1967, c. 1091.)

§ **54-44.6. Examination and certificate of amendments.** — Upon receipt from the Secretary of State of a copy of proposed amendments to the articles of incorporation of a guaranty association, the Commissioner shall at once examine the proposed amendments to determine their effect on the operation of the guaranty association.

In the event such proposed amendments are correct in form and substance and the examination shows that if adopted they would not change the character or principal business of the guaranty association, the Commissioner shall so certify to the Secretary of State.

The Commissioner may refuse to make such certification if upon examination he has reason to believe the proposed amendments would change the character of the business of the guaranty association or the best interests of the public will not be promoted by their adoption. (1967, c. 1091.)

§ **54-44.7. Recording of amendments; certified copies.**—Upon receipt of the certificate provided for in G.S. 54-44.6, the Secretary of State shall record the amendments to the articles of incorporation and furnish a certified copy thereof to the corporation and to the Commissioner. (1967, c. 1091.)

§ **54-44.8. Powers of associations.**—A guaranty association incorporated in accordance with the provisions of this article may:

(1) Assure the liquidity of a member institution;

(2) Guarantee the free shares or deposits in a member institution;

(3) Loan money to a member institution for the purpose of assuring its liquidity and deposits therein;

(4) Buy any assets owned by a member institution for the purpose of assuring its liquidity and deposits therein;

(5) Invest any of its funds in:

a. Bonds or interest-bearing obligations of the United States or for which the faith and credit of the United States are pledged for the payment of principal and interest;
b. Bonds or interest-bearing obligations of this State;
c. Farm loan bonds issued under the "Federal Farm Loan Act" and amendments thereto;
d. Notes, debentures, and bonds of the federal home loan bank issued under the "Federal Home Loan Bank Act" and any amendments thereto;
e. Bonds or other securities issued under the "Home Owners Loan Act of 1933" and any amendments thereto;
f. Securities acceptable to the United States to secure government deposits in national banks;
g. Certificates of deposit of any financial institution that is subject to examination and supervision by the United States or by this State.
h. Bonds or other evidences of indebtedness of counties and municipalities of the State of North Carolina; provided, that said bonds or other evidences of indebtedness of such counties and municipalities shall have a rating by Moody's Investors Services, Inc., of not less than AA, and a rating by the North Carolina Municipal Council, Inc., of not less than ninety (90) points out of one hundred (100) points.

(6) Issue its capital notes or debentures to member institutions, provided the holders of such capital notes or debentures shall not be individually responsible as such holders for any debts, contracts, or engagements of the guaranty association issuing such notes or debentures;

(7) Borrow money;

(8) Exercise any corporate power or powers not inconsistent with, and which may be necessary or convenient to, the accomplishment of its purposes of assuring liquidity of member institutions and guaranteeing deposits therein. (1967, c. 1091; 1969, c. 816.)

Editor's Note. — The 1969 amendment added paragraph h of subdivision (5).

§ **54-44.9. Filing of semiannual financial reports.**—Each guaranty association shall on the thirtieth day of June and the thirty-first day of December of each year, or within 40 days thereafter, file with the Commissioner a report for the preceding half year, showing its financial condition at the end thereof.

Such reports shall be in such form and contain such information as may be prescribed by the Commissioner. (1967, c. 1091.)

§ **54-44.10. Annual examination of associations.** — At least once each year the Commissioner shall make or cause to be made an examination into the affairs of each guaranty association doing business in this State. The expenses of such yearly examination shall be paid by the association so examined. (1967, c. 1091.)

§ **54-44.11. Special examinations.**—Whenever the Commissioner deems it necessary he may make or cause to be made a special examination of any guaranty association doing business in this State in addition to the regular examination provided for by this article. The expense of a special examination shall be paid by the guaranty association so examined. (1967, c. 1091.)

§ **54-44.12. Right to enter and conduct investigations.** — The Commissioner or any examiner appointed by him shall have access to and may compel the production of all books, papers, securities, moneys, and other property of a guaranty association under examination by him. He may administer oaths to and examine the officers and agents of such association as to its affairs. (1967, c. 1091.)

§ **54-44.13. Fees.**—Each guaranty association doing business in this State shall pay to the Commissioner, at the time of filing each semiannual report required by this article, the sum of five dollars ($5.00). All such fees shall be paid into the State treasury to the credit of the general fund. (1967, c. 1091.)

SUBCHAPTER III. CREDIT UNIONS.

Article 9.

Credit Union Division; Administrator of Credit Unions.

§ **54-74. Creation and supervision of division.**—There shall be established in the North Carolina Department of Agriculture a credit union division, which shall be under the supervision of Administrator of Credit Unions appointed by the Commissioner of Agriculture. The credit union division and the Administrator of Credit Unions shall be under the general direction and supervision of the Commissioner of Agriculture, and there shall be such assistants to the Administrator of Credit Unions as may be necessary and the salaries of the Administrator and assistants shall be fixed by the State Personnel Council.

Wherever the word or term "superintendent" appears in subchapter III of chapter 54 of Volume 2B (Replacement, 1965) of the General Statutes of North Carolina the same is hereby stricken out and deleted and there is inserted in lieu thereof the word or term "Administrator." (1915, c. 115, s. 1; C. S., s. 5208; 1925, c. 73, s. 4; 1935, c. 87; 1965, c. 956, s. 1.)

Editor's Note.—
The 1965 amendment rewrote this section.

§ **54-75. Duties of Administrator.** — The duties of the Administrator of Credit Unions shall be as follows:

(1) To organize and conduct in the State Department of Agriculture, a bureau of information in regard to co-operative associations and rural and industrial credits.

(2) Upon the application of three persons residing in the State of North Carolina, to furnish, without cost, such printed information and blank forms as, in his discretion, may be necessary for the formation and establishment of any local credit union in the State.

(3) To maintain an educational campaign in the State looking to the promotion and organization of credit unions. Upon the written request of twelve bona fide residents of any particular locality in this State expressing a desire to form a local credit union at or in such locality, the Administrator of Credit Unions, or one of his assistants, shall proceed as promptly as may be convenient to such locality and make an investigation in order that the Administrator may determine whether or not a local credit union should be established according to the standards set forth and provided in this subchapter. The Administrator shall notify the applicants of his decision within thirty days after receipt of the written request. Before refusing the establishment of a credit union the Administrator shall afford the applicants an opportunity to be heard therewith in person or by counsel and at least sixty days prior to the date set for a hearing on any such matter shall notify in writing the applicants of the date of said hearing and assign therein the grounds for the action contemplated to be taken and as to which inquiry shall be made on the date of such hearing. The determination of the Administrator shall be subject to judicial review in all respects

according to the provisions and procedures set forth in article 33 of chapter 143 of the General Statutes of North Carolina, as amended.

(4) To examine at least once a year, and oftener if such examination be deemed necessary by the Administrator or his assistant, the credit unions formed under this subchapter. A report of such examination shall be filed with the State Department of Agriculture, and a copy mailed to the credit union at its proper address.

(5) The Administrator of Credit Unions is authorized, empowered, and directed to require that every person employed, appointed or elected by any credit union to any position requiring the receipt, payment or custody of money or personal property owned by a credit union or in its custody or control as collateral or otherwise, to give bond in a corporate surety company authorized to do business in North Carolina. Any such bond or bonds shall be in a form approved by the Administrator of Credit Unions with a view to providing surety coverage to the credit union with reference to loss by reason of acts of fraud or dishonesty including forgery, theft, embezzlement, wrongful abstraction or misapplication on the part of the person, directly or through connivance with others, and such other surety coverages as the Administrator of Credit Unions may determine to be reasonably appropriate or as elsewhere required by the chapter. Any such bond or bonds shall be in an amount in relation to the money or other personal property involved or in relation to the assets of the credit union as the Administrator may from time to time prescribe by regulation for the purpose of requiring reasonable coverage. In lieu of individual bonds the Administrator may approve the use of a form of schedule or blanket bond which covers all boards and committee members and employees of a credit union whose duties include the receipt, payment, or custody of money or other personal property for or on behalf of the credit union. The Administrator may also approve the use of a form of excess coverage bond whereby a credit union may obtain an amount of coverage in excess of the basic surety coverage. No agreement, compromise or settlement of any claim or claims filed by a credit union with any surety or any surety company, for less than the full amount of said claim or claims, shall be entered into or made by the board of directors of any credit union unless and until the said claim or claims shall have been submitted to the Administrator of Credit Unions and his advice thereon given or transmitted to the board of directors of said credit union.

The following schedule shall be deemed as the minimum fidelity and faithful performance bond requirements only:

Assets	*Minimum Coverage*
$0,000 to $5,000	$1,000
5,001 to 10,000	2,000
10,001 to 20,000	4,000
20,001 to 30,000	6,000
30,001 to 40,000	8,000
40,001 to 50,000	10,000
50,001 to 75,000	15,000
75,001 to 100,000	20,000
100,001 to 150,000	30,000
200,001 to 300,000	40,000
300,001 to 400,000	50,000
400,001 to 500,000	70,000
500,001 to 750,000	85,000
750,001 to 1,000,000	100,000

Over $1,000,000 minimum amount, $100,000 plus $50,000 for each additional million or fraction thereof of assets.

It shall be the duty of the board of directors of each credit union to provide proper protection to meet any circumstances by obtaining adequate bond (and insurance) coverage in excess of the above minimum schedule. The treasurer and all other persons handling credit union funds or records before entering upon his or their duties shall give a proper bond with good and sufficient surety, in an amount and character to be determined by the board in compliance with regulations conditioned upon the faithful performance of his or their trust.

The Administrator may require additional coverage for any credit union when, in his opinion, the surety bonds in force are insufficient to provide adequate surety coverage, and it shall be the duty of the board of directors of any credit union to obtain such additional coverage within sixty days after the date of written notice by the Administrator to such board of directors. For good cause shown the Administrator may extend the time to obtain additional coverage. (1915, c. 115, s. 1; C. S., s. 5209; 1925, c. 73, ss. 2, 3, 5, 6; 1935, c. 87; 1957, c. 989, s. 1; 1965, c. 956, ss. 1-3.)

Editor's Note.—

The 1965 amendment substituted "Administrator" for "Superintendent" throughout this section, and rewrote subdivision (3). It also added the schedule and subsequent paragraphs to subdivision (5).

ARTICLE 10.

Incorporation of Credit Unions.

§ **54-76. Applications filed.**—Twelve or more persons employed or residing in the State may become a credit union by making, signing, and acknowledging a certificate which shall contain:

(1) The name of the proposed credit union which shall include the words "credit union."

(2) A statement that incorporation is desired under this article.

(3) The conditions, whether of residence, of occupation, or otherwise, which shall qualify persons for membership.

(4) The par value of the shares, which shall not exceed twenty-five dollars.

(5) The city, village, or town in which its principal business office is to be located. If it is to be located in an incorporated city, the street address of the city shall be given. If the condition of its membership is employment by a certain individual, copartnership, or corporation, a statement that its office shall be with such individual, copartnership, or corporation may be substituted for the street address.

(6) The number of its directors, not less than five, all of whom must be members of and shareholders in the corporation.

(7) The names and post-office addresses of the directors for the first year.

(8) The names and post-office addresses of the subscribers to the certificate, and a statement of the number of shares of stock which each agrees to take in the corporation. (1915, c. 115, s. 2; C. S., s. 5210; 1925, c. 73, s. 3; 1935, c. 87; 1965, c. 956, s. 4.)

Editor's Note. — The 1965 amendment substituted "Twelve" for "Seven" at the beginning of this section.

§ **54-78. Certificate of incorporation.**—The bylaws acknowledged to have been adopted by all of the incorporators, together with the certificate of incorporation, shall be filed in the office of the Administrator of Credit Unions who shall approve the certificate of incorporation if he is satisfied that:

(1) The certificate of incorporation and bylaws are in conformity with this subchapter;
(2) The general character and fitness of the subscribers or incorporators, and their ability to provide proper business and financial records and conduct sound financial operations is reasonably probable;
(3) The bylaws are reasonable and will tend to give assurance that the affairs of the prospective credit union will be administered in accord with this subchapter;
(4) The economic advisability and that convenience and necessity require a credit union in the locality.

Thereupon, the Administrator of Credit Unions shall issue to the corporation a certificate of approval, annexed to a duplicate of the certificate of incorporation and of the bylaws, which certificate of approval, together with the attached duplicate certificate of incorporation, shall be recorded in the office of the register of deeds of the county in which the office of such credit union is situated, and upon recordation of the incorporators shall become and be a corporation for the purposes set forth in this subchapter. The register of deeds of the county in which such recordation is made shall charge the same fee for such recordation as he is now allowed to charge for handling and recording a certificate of incorporation of a corporation organized under the business corporation laws of the State. (1915, c. 115, s. 2; C. S., s. 5212; 1925, c. 73, s. 3; 1935, s. 87; 1965, c. 956, s. 5; 1967, c. 823, s. 9.)

Cross Reference.—See Editor's note to § 53-5.

Editor's Note. — The 1965 amendment rewrote this section.

The 1967 amendment, effective Jan. 1, 1968, substituted "register of deeds" for "clerk of superior court" and "clerk of the superior court" in two places in this section.

§ **54-79. Amendment of bylaws.**—The bylaws adopted by the incorporators and approved by the Administrator of Credit Unions shall be the bylaws of the corporation, and no amendment to the bylaws shall become operative until such amendment shall have been approved and filed by the Administrator of Credit Unions; and a copy thereof certified by him, with a certificate of his approval, shall be filed with the credit union. Such approval may be given or withheld by the Administrator of Credit Unions, at his discretion. The determination of the Administrator shall be subject to judicial review in all respects according to the provisions and procedures set forth in article 33 of chapter 143 of the General Statutes of North Carolina as amended. (1915, c. 115, s. 3; C. S., s. 5213; 1925, c. 73, s. 3; 1935, c. 87; 1965, c. 956, s. 6.)

Editor's Note. — The 1965 amendment rewrote this section.

§ **54-81. Change of place of business.**—A credit union may change its place of business on the written approval of the Administrator of Credit Unions upon filing with the Administrator of Credit Unions a written application or request setting forth all details of such proposed change, and setting forth the location, building, office, and proper address of such proposed change or new location. If the Administrator of Credit Unions shall approve such change of place of business, then he shall record such approval in his office, and a duplicate of such approval shall be recorded in the office of the register of deeds where its office was located, and a second duplicate in the office of the register of deeds of the county in which the new office is to be located, if same is changed to another county. If the change is from one location to another in the same county, then the recordation shall be in said county. Before refusing any change in location the Administrator shall afford the credit union an opportunity to be heard in connection therewith in person or by counsel and at least thirty days prior to the date set for a hearing on any such matter shall notify in writing the credit union the date of said hearing and assign therein the grounds for the action contemplated to be taken and as to which inquiry shall be made on the date of such hearing. The determination of the Administrator shall be subject to judicial review in all respects according to the provisions and procedures set forth in article 33 of chapter 143 of the General Statutes of North Carolina, as amended. (1915, c. 115, s. 25; C. S., s. 5215; 1925, c. 73, s. 3; 1935, c. 87; 1965, c. 956, s. 7; 1967, c. 823, s. 10.)

Cross Reference.—See Editor's note to § 53-5.

Editor's Note. — The 1965 amendment rewrote this section.

The 1967 amendment, effective Jan. 1, 1968, substituted "register of deeds" for "clerk of the superior court" in two places in the second sentence.

ARTICLE 11.

Powers of Credit Unions.

§ **54-84. Borrowing money.**—If the bylaws so provide, a credit union shall have power to borrow money in addition to receiving deposits, but the aggregate amount of such indebtedness shall not at any one time exceed more than the total sum of its capital, surplus, and reserve fund. (1915, c. 115, s. 17; C. S., s. 5218; 1925, c. 73, s. 10; 1935, c. 87; 1965, c. 956, s. 8.)

Editor's Note. — The 1965 amendment deleted "from any source" formerly appearing between "borrow money" and "in addition," and substituted "the total sum" for "four (4) times the sum."

§ **54-85. Authority to execute contracts of guaranty in certain cases.**—A credit union may execute such contracts of guaranty as may be necessary to procure credit for its members: Provided, that the said contracts of guaranty shall not place on the said local credit union a liability arising in any one year in excess of ten (10) per cent of the total credit under the said contracts of guaranty handled through that association in a particular year; and provided further, that all such contracts shall be approved by the Administrator of Credit Unions and each such contract must bear his approval in writing before becoming effective. In assuming such liability the said credit union may require of the individual members being served such security as the board of directors of each such credit union may determine upon. (1925, c. 73, s. 11; 1935, c. 87; 1965, c. 956, s. 1.)

Editor's Note. — The 1965 amendment substituted "Administrator of Credit Unions" for "Superintendent of Credit Unions" near the end of the first sentence.

§ **54-85.1. Conversion from State to federal credit union and from federal to State credit union.**—(a) A State credit union may be converted into a federal credit union under the laws of the Federal Credit Union Act.

(1) The proposition for such conversion shall be approved, and a date set for a vote thereon by the members (either at a meeting to be held on such date or by written ballot to be filed on or before such date), by a majority of the directors of the State credit union. Written notice of the proposition and of the date set for the vote shall then be delivered in person to each member, or mailed to each member at the address for such person appearing on the records of the credit union, not more than thirty nor less than seven days prior to such date. Approval of the proposition for conversion shall be by the affirmative vote of a majority of the members, in person or in writing.

(2) A statement of the results of the vote, verified by the affidavits of the president or vice president and the secretary, shall be filed with the State credit union division within ten days after the vote is taken.

(3) Promptly after the vote is taken and in no event later than ninety days thereafter, if the proposition for conversion was approved by such vote, the credit union shall take such action as may be necessary un-

der the Federal Credit Union Act to make it a federal credit union, and within ten days after receipt of the federal credit union charter there shall be filed with the State credit union division a copy of the charter thus issued. Upon such filing the credit union shall cease to be a State credit union.

(4) Upon ceasing to be a State credit union such credit union shall no longer be subject to any of the provisions of the North Carolina Credit Union Act. The successor federal credit union shall be vested with all of the assets and shall continue responsible for all of the obligations of the State credit union to the same extent as though the conversion had not taken place.

(b) (1) A federal credit union organized under the laws of the United States, may be converted into a State credit union (i) complying with all federal credit union requirements requisite to enabling it to convert to a State credit union or to cease being a federal credit union, (ii) filing with the State credit union division proof of such compliance, satisfactory to the Administrator of Credit Unions and (iii) filing with the State credit union division an organization certificate as required by the State Credit Union Act.

(2) When the Administrator of the State credit union division has been satisfied that all of such requirements, and all other requirements of the State Act, have been complied with, the Administrator of the credit union division shall approve the organization certificate. Upon such approval, the federal credit union shall become a State credit union as of the date it ceases to be a federal credit union. The State credit union shall be vested with all of the assets and shall continue responsible for all of the obligations of the federal credit union to the same extent as though the conversion had not taken place. (1965, c. 956, s. 9.)

§ **54-86. Investment of funds.**—The capital, deposits, undivided profits and reserve fund of the corporation may be invested in any of the following ways, and in such ways only:

(1) They may be lent to the members of the corporation in accordance with the provisions of this subchapter.

(2) They may be deposited to the credit of the corporation in savings banks, credit unions, building and loan associations, State banks or trust companies, incorporated under the laws of the State, or in national banks located therein.

(3) A credit union shall keep on deposit at interest in any of such depositories as are enumerated in the next preceding subdivision so much of the reserve fund and capital stock as shall equal five (5) per cent of the total liabilities. The said five per cent (5%) representing said deposit shall not be encumbered or in any manner pledged, hypothecated, used as collateral, or in any manner used as security for a loan.

(4) Not more than twenty-five (25) per cent of the capital stock and reserve fund of a credit union may be invested in the stock of another local credit union and not more than twenty-five (25) per cent of the capital stock and reserve fund of a local association may be invested in the stock of a central association.

(5) They may be invested in obligations of the United States, including bonds and securities upon which payment of principal and interest is fully guaranteed by the United States.

(6) They may be placed on time deposits in any banks insured by the Federal Deposit Insurance Corporation or may be deposited or may be invested in any savings or building and loan association insured by the Federal Savings and Loan Insurance Corporation.

(7) They may be invested in the North Carolina mutual deposit guaranty associations. (1915, c. 115, s. 18; 1917, c. 232, ss. 2, 3; C. S., s. 5219; 1925, c. 73, ss. 12, 13, 14; 1935, c. 87; 1939, c. 400, s. 1; 1947, c. 781; 1965, c. 956, ss. 10, 11; 1969, c. 69, s. 1.)

Editor's Note.—

The 1965 amendment substituted "any" for "one" and "ways" for "way" in the introductory language of this section, added the last sentence in subdivision (3), substituted "twenty-five (25)" for "ten (10)" near the beginning of subdivision (4), and added subdivisions (5) and (6).

The 1969 amendment added subdivision (7).

§ **54-87. Loans.**—(a) To Members.—A credit union may lend to its members for such purposes and upon such security and terms as the bylaws shall provide and the credit committee shall approve; but a credit union may make unsecured individual loans not in excess of fifteen hundred dollars ($1500.00) when bylaws authorizing such loans shall be first approved by the Administrator of Credit Unions: Provided, however, that no member shall be permitted to borrow in excess of two hundred dollars ($200.00) or ten per centum (10%) of the total paid in shares of the credit union, whichever is greater. An endorsed note shall be deemed to be security within the meaning of this section.

(b) Loans to Members of Committee.—The supervisory committee shall appoint a substitute to act on the credit committee in the place of any member in case such member makes application to borrow money from the credit union or becomes surety for any other member whose application for a loan is under consideration.

(c) Loans to Persons Not Members Forbidden.—All officers and members of any committees in any way knowingly permitting or participating in making a loan of funds of a credit union to persons not members shall be guilty of a misdemeanor and upon conviction or plea of guilty shall be imprisoned not more than two years or fined not in excess of ten thousand dollars ($10,000.00), or both such fine and imprisonment. The credit union shall have the right to recover the amount of such illegal loans from the borrower or from any officers or members of committees who knowingly permitted or participated in the making thereof, or from all of them jointly.

(d) Repayment of Loans.—A borrower may repay the whole or any part of his loan on any day on which the office of the corporation is open for the transaction of business. (1915, c. 115, s. 19; 1917, c. 232, s. 4; C. S., s. 5220; 1925, c. 73, s. 3; 1935, c. 87; 1955, c. 1135, s. 2; 1961, c. 1187, s. 1; 1965, c. 956, ss. 1, 12, 13; 1969, c. 69, s. 9.)

Editor's Note.—

The 1965 amendment substituted "Administrator" for "Superintendent" in subsection (a), deleted former subsection (b), redesignated former subsection (c) as present subsection (b), rewrote former subsection (d) and redesignated it as present subsection (c), and redesignated former subsection (e) as present subsection (d).

The 1969 amendment substituted "fifteen hundred dollars ($1500.00)" for "seven hundred fifty dollars ($750.00)" in the first sentence of subsection (a).

§ **54-89. Ownership and leasing of real estate.**—Any credit union may purchase and hold a lot and building to be used principally for the transaction of credit union business, by first obtaining written approval from the Administrator of Credit Unions. Provisions may be made for future expansion; and any excess space which is not occupied by the credit union may be leased to the public. (1927, c. 101; 1929, c. 43, s. 1; 1931, c. 329; 1965, c. 956, s. 14.)

Editor's Note. — The 1965 amendment rewrote this section, which formerly pertained to interest or discount rate charged by agricultural association.

§ **54-90. Reserve fund.**—All entrance fees, transfer fees, and fines shall, after the payment of organization expenses, be known as reserve income, and shall be added to the reserve fund of the corporation.

At the close of each fiscal year when the reserve fund does not equal five per centum (5%) of the corporation's outstanding loans, or five thousand dollars ($5,000.00) whichever is greater, there shall be set apart to the reserve fund twenty per centum (20%) of the net income of the credit union which has accumulated during the year. At the end of any fiscal year when the reserve fund equals or is in excess of five per centum (5%) of the corporation's outstanding loans or five thousand dollars ($5,000.00) whichever is greater, then the board of directors may reduce the amount to be set apart to the reserve fund each year to an amount not less than ten per centum (10%) of the net income of the credit union. When the reserve fund is equal to seven per centum (7%) of the outstanding loans or ten thousand dollars ($10,000.00) whichever is the greater, the board of directors shall not be required to make an allocation to the reserve fund. The reserve fund shall not be distributed to the members except upon dissolution of the credit union. Nothing in this section shall be construed as limiting the amount that a credit union may set apart to its reserve fund. The reserve fund shall belong to the credit union and all loans which the board of directors decide are uncollectible may at the option of the board of directors be charged against the reserve fund, undivided profits, or income during the year. (1915, c. 115, s. 21; C. S., s. 5222; 1939, c. 400, s. 2; 1955, c. 1135, s. 1; 1969, c. 69, ss. 2, 10.)

Editor's Note.—

The 1969 amendment substituted "corporation's outstanding loans" for "capital and liabilities" in the first and second sentences of the second paragraph and substituted "seven per centum (7%) of the outstanding loans" for "ten per centum (10%) of the capital and liabilities" in the third sentence of that paragraph.

§ **54-91. Dividends.**—The board of directors of any credit union may declare dividends as its bylaws provide.

At the close of a fiscal year a credit union may declare a dividend not to exceed six percent (6%) per annum from the income during the year and which remains after the deduction of expenses, interest on deposits, and the amount required to be set apart to the reserve fund. Dividends shall be paid on all fully paid shares outstanding at the close of the fiscal period, but shares which become fully paid by the 10th day of any month of the period may be entitled to a proportional part of such dividend calculated from the first day of the month: Provided that in any one year not more than twenty-five percent (25%) of the undivided earnings may be used to pay a dividend and the remainder of said dividend shall be paid from the current year's earnings. (1915, c. 115, s. 22; C. S., s. 5223; 1925, c. 73, s. 3; 1935, c. 87; 1957, c. 989, s. 3; 1965, c. 956, s. 15; 1969, c. 69, ss. 3, 4.)

Editor's Note.—

The 1965 amendment added the proviso at the end of the section.

The 1969 amendment deleted "semiannually or annually" following "dividends" in the first sentence and rewrote the proviso at the end of the section.

§ **54-92. Voluntary dissolution.**—At any meeting specially called to consider the subject, three fourths of the members present and represented may vote to dissolve the corporation and upon such vote shall signify their consent to such dissolution in writing. Such corporation shall then file in the office of the Administrator of Credit Unions such consent, attested by its secretary or treasurer and its president or vice-president, with a statement of the names and residences of the existing board of directors of the corporation and the names and residences of its officers duly certified. The Administrator of Credit Unions, upon receipt of satisfactory proof of the solvency of the corporation, shall issue to such corporation, in duplicate, a certificate to the effect that such consent and statement have been filed and that it appears therefrom that such corporation has complied with this section. Such duplicate certificate shall be filed by the corporation in the office of the register of deeds of the county in which the corporation has its place of business, and thereupon such corporation shall continue in existence only for the purpose of paying, satisfying, and discharging any existing debts or obligations, collecting and distributing its assets and doing all other acts required in order to adjust and wind up its business and affairs; and may sue and be sued for the purpose of enforcing such debts and obligations until its business and affairs are fully adjusted and wound up. The Administrator of Credit Unions, or an agent appointed by him, shall take possession of the property and business of such corporation and shall proceed to adjust and wind up the business and affairs of the corporation with the power to liquidate its assets and apply the same in discharge of debts, obligations and expenses of such corporation and after paying and adequately providing for the payment of such debts, obligations, and expenses shall pay to the shareholders the balance of the assets, in proportion to the number of shares held by each shareholder. The corporation shall then be dissolved and its certificate of incorporation revoked. The liquidating agent's fee, if any, shall be set by the Administrator of Credit Unions. (1915, c. 115, s. 24; C. S., s. 5224; 1925, c. 73, ss. 3, 15; 1935, c. 87; 1957, c. 989, s. 4; 1965, c. 956, s. 1: 1967, c. 823, s. 11.)

Cross Reference.—See Editor's note to § 53-5.

Editor's Note.—

The 1965 amendment substituted "Administrator of Credit Unions" for "Superintendent of Credit Unions" throughout this section.

The 1967 amendment, effective Jan. 1, 1968, substituted "register of deeds" for "clerk of superior court" in the fourth sentence.

ARTICLE 12.

Shares in the Corporation.

§ **54-94. Ownership of shares.**—The capital of a credit union shall consist of the payments that have been made to it by the several members thereof on the shares, undivided surplus, and reserves. Shares may be subscribed for and paid in such manner as the bylaws shall prescribe. The credit union shall have a lien on the shares of any member and upon any dividends payable thereon for and to the extent of any loan made to him and of any dues or fines payable by him. The credit union may, upon the resignation or expulsion of a member, cancel the shares of such member and apply the withdrawal value of such shares towards the liquidation of the member's indebtedness. (1915, c. 115, s. 13; C. S., s. 5226; 1925, c. 73, s. 3; 1935, c. 87; 1965, c. 956, ss. 16, 17.)

Editor's Note. — The 1965 amendment added "undivided surplus, and reserves" at the end of the first sentence, and deleted the former last two paragraphs of this section, which pertained to entrance fees and transfer of shares.

ARTICLE 13.

Members and Officers.

§ **54-98. Who may become members.**—The membership of the corporation shall consist of those persons who have been duly elected to membership and who have subscribed for one or more shares and have paid for the same in whole or in part, together with the entrance fee as provided in the bylaws, and have complied with such other requirements as the bylaws may contain: Provided, that credit union membership shall be limited to groups having a common bond of occupation or association or residents within a well defined neighborhood community, or rural district, employees of a common employer, or members of a bona fide fraternal, religious, co-operative, labor, rural, educational or similar organization.

The provisions of this subsection shall not prohibit a credit union from maintaining offices from locations other than its main office if the maintenance of such offices shall be reasonably necessary to furnish service to its membership. Provided, however, no such additional offices shall be established to serve persons who are not entitled to membership as defined in the preceding paragraph and would not be entitled to services of the credit union at its main office. Provided further that the establishment of additional offices shall be subject to the approval of the Administrator of Credit Unions.

No credit union shall ever pay any commission or offer compensation for the securing of members or on the sale of shares. (1915, c. 115, s. 6; C. S., s. 5230; 1925, c. 73, s. 3; 1935, c. 87; 1965, c. 956, s. 18.)

Editor's Note. — The 1965 amendment added the proviso at the end of the first sentence, inserted the second paragraph, and transferred the former second sentence to appear as the present third paragraph.

§ 54-101. Election of directors and committees.—(a) Number Elected.—At the annual meeting the members shall elect a board of directors of not less than five (5) members and a credit committee of not less than three (3) members. However, in credit unions whose business offices are located in places other than incorporated cities, the board of directors may also be the credit committee. Except as herein specified, no member of the board of directors shall be a member of the credit committee or of the supervisory committee, hereinafter provided, nor shall one person be a member of more than one such committee. All members of committees and all directors, as well as all officers whom they may elect, shall be sworn, and shall hold their several offices for such terms as may be determined by the bylaws. The board of directors may appoint a membership committee or membership officer from the members of the credit union, other than the treasurer, and assistant treasurers, or a loan officer, and authorize such membership committee or membership officer to approve applications for membership under such conditions as the board may prescribe, except that such membership committee or membership officer so authorized shall submit to the board at each monthly meeting a list of approved or pending applications for membership received since the previous monthly meeting, together with such other related information as the bylaws or board may require.

(b) Oath of Office.—The oath required of each director, officer, and member of committee shall be the oath of the individual taking the same that he will, so far as the duty devolves on him, diligently and honestly administer the affairs of such corporation, and will not knowingly violate or willingly permit to be violated any of the provisions of law applicable to such corporation, and that he is the owner in good faith and in his own right on the books of the corporation of at least one share therein. Such oath shall be subscribed by the individual making it and certified by the officer before whom it is taken, and shall immediately be transmitted to the Administrator of Credit Unions and filed and preserved in his office. (1915, c. 115, s. 9; C. S., s. 5233; 1925, c. 73, s. 3; 1935, c. 87; 1965, c. 956, ss. 1, 19.)

Editor's Note. — The 1965 amendment deleted a former reference to the supervisory committee in the first sentence of subsection (a), substituted "directors may also" for "directors as such may also" in the second sentence of that subsection, substituted "the credit committee or of the supervisory committee, hereinafter provided" for "either of such committees" in the third sentence thereof, and added the last sentence. It also substituted "Administrator of Credit Unions" for "Superintendent of Credit Unions" near the end of subsection (b).

§ 54-102. Duties of board of directors.

(b) General Management.—The board of directors shall have the general management of the affairs, funds, and records of the corporation, shall meet as often as may be necessary, and, unless the bylaws shall specifically reserve all or any of these duties to the members, it shall be the special duty of the directors:

(1) To act upon all applications for membership and the expulsion of members.

(2) To fix the amount of the surety bond which shall be required of every person employed, appointed or elected by the credit union to any position requiring the receipt, payment or custody of money or personal property owned by the credit union or in its custody or control as collateral or otherwise, in accordance with the provisions of subdivision (5) of G.S. 54-75.

(3) To determine from time to time the rate of interest which shall be allowed on deposits and charged on loans.

(4) To fix the maximum number of shares which may be held by and the maximum amount which may be lent to any one member; to declare dividends; and to recommend amendments to the bylaws.

(5) To fill vacancies in the board of directors or in the credit committees until the election and qualification of successors.

(6) To have charge of the investment of the funds of the corporation except loans to members, and to perform such other duties as the members may from time to time authorize.

(7) The board of directors at its first meeting after its election shall appoint a supervisory committee, (no more than one of whom may be a member of the board of directors and none a member of the credit committee), of not less than three members who shall serve for such terms as may be fixed by the bylaws. The board of directors may remove or suspend any member of the supervisory committee for neglect of duty, misfeasance, malfeasance, official misconduct, or for other good cause shown.

(1965, c. 956, s. 20.)

Editor's Note.—

The 1965 amendment added subdivision (7) of subsection (b).

As the rest of the section was not affected by the amendment, it is not set out.

§ **54-103. Duties of credit committee; appointment, powers and duties of loan officers.**—The credit committee shall meet as often as may be required after due notice has been given to each member. The credit committee shall approve every loan or advance made by the corporation to members, except as hereinafter provided in this section. Every application for a loan shall be made in writing and shall state the purpose for which the loan is desired and the security offered. No loan shall be made unless it has received the unanimous approval of those members of the committee who were present when it was considered, who shall constitute at least a majority of the committee, but the applicant for a loan may appeal from the decisions of the credit committee to the board of directors. When authorized by bylaws approved by the Administrator of Credit Unions, the credit committee, with the approval of the board of directors, may appoint one or more loan officers, and delegate to him or them the power to approve loans, secured and unsecured, up to the legal limit. Each loan officer shall furnish to the credit committee a record of each loan approved or not approved by him within seven (7) days of the date of filing of the application therefor. All loans not approved by a loan officer shall be acted upon by the credit committee. No individual shall have authority to disburse funds of the credit union for any loan which has been approved by him in his capacity as a loan officer. Not more than one member of the credit committee may be appointed as a loan officer. (1915, c. 115, s. 11; C. S., s. 5235; 1961, c. 1187, s. 22; 1965, c. 956, s. 1; 1969, c. 69, s. 5.)

Editor's Note.—

The 1965 amendment substituted "Administrator of Credit Unions" for "Superintendent of Credit Unions" near the middle of the section.

The 1969 amendment substituted, "secured and unsecured, up to the legal limit" for "up to the unsecured limit, or in excess of such limit if such excess is fully secured by unpledged shares in the credit union" at the end of the fifth sentence.

§ **54-104. Duties of supervisory committee.**—The supervisory committee shall examine the securities, cash and accounts of the corporation, and evaluate the acts of the board of directors, credit committee, and employees at least quarterly. Any violation of this subchapter or of the bylaws or any practice of the corporation which, in the opinion of the said committee, is unsafe, unsound, or unauthorized shall be reported to the board of directors and Administrator of Credit Unions within seven days after its discovery.

At least once during each fiscal year the supervisory committee shall make, or cause to be made, a thorough audit of the receipts, disbursements, income, assets, and liabilities of the corporation, which shall include verification of members' accounts, and shall make a full report thereon to the directors; and a copy shall be sent to the Administrator of Credit Unions. This report shall be read at the annual meeting of the members and shall be filed and preserved with the records of the corporation. (1915, c. 115, s. 12; C. S., s. 5236; 1965, c. 956, s. 21.)

Editor's Note. — The 1965 amendment rewrote this section.

ARTICLE 14.

Supervision and Control.

§ **54-105. Corporations organized hereunder subject to Administrator of Credit Unions; rules and regulations.**—In addition to any and all other powers, duties and functions vested in the Administrator of Credit Unions under the provisions of this subchapter, the Administrator of Credit Unions shall have general control, management and supervision over all corporations organized under the provisions of this subchapter. All corporations organized under the provisions of this subchapter shall be subject to the management, control and supervision of the Administrator of Credit Unions as to their conduct, organization, management, business practices and their financial and fiscal matters. The Administrator of Credit Unions may prescribe rules and regulations for the administration of this subchapter, as well as rules and regulations relating to financial records, business practices and the conduct and management of credit unions, and it shall be the duty of the board of directors and of the various officers of the credit union to put into effect and to carry out such regulations. (1915, c. 115, s. 7; C. S., s. 5237; 1925, c. 73, s. 3; 1935, c. 87; 1957, c. 989, s. 6; 1965, c. 956, ss. 1, 22.)

Editor's Note.—

The 1965 amendment substituted "Administrator of Credit Unions" for "Superintendent of Credit Unions" in the first and second sentences, and added the last sentence.

§ **54-106. Reports; penalties; fees.**—(a) Every corporation organized under this subchapter shall, in January and in July of each year, make a report of condition to the Administrator of Credit Unions giving such information as he shall require, which reports shall be verified by oath of the treasurer and by oath of a majority of the supervisory committee, and shall make such other and further reports under like oath as the Administrator shall demand at any time.

(b) Each credit union applying on or after July first, one thousand nine hundred forty-one, for a certificate to do business under the provisions of this subchapter shall, before receiving such certificate, pay into the office of the Administrator of Credit Unions a charter fee of five dollars ($5.00).

(c) Fees to Be Paid to Office of Administrator of Credit Unions.—Each credit union subject to supervision and examination by the Administrator of Credit Unions, including credit unions in process of voluntary liquidation, shall pay into the office of the Administrator of Credit Unions twice each year, in the months of January and July, supervision and examination fees.

The Commissioner of Agriculture, shall, on or before December 1 of each year, determine and fix the scale of supervisory and examination fees to be assessed during the next calendar year. However, when the costs of any examination exceed the annual fees assessed and paid by the credit union, the Administrator of Credit Unions may, in his discretion, invoke the provisions of § 54-107, giving due consideration to the time and expense incident to such examination, and the ability of the credit union to pay such additional fees. The additional fees, if assessed by the Administrator, in his discretion, shall be paid by each credit union promptly after the completion of the examination; provided that such additional fees shall not exceed the estimated cost of such examination.

No credit union shall be required to pay any supervisory fee until the expiration of twelve months from the date of the issuance of a certificate of incorporation to such credit union.

(d) Any such corporation which neglects to make semiannual reports as provided in subsection (a) of this section, or any of the other reports required by the Administrator of Credit Unions at the time fixed by the Administrator, shall forfeit to the Administrator of Credit Unions five dollars ($5.00) for each day such neglect continues; and, furthermore, the Administrator of Credit Unions shall have authority, in his discretion, to revoke the certificate of incorporation and take possession of the assets and business of any corporation failing to pay the fees required in this section after serving notice of at least fifteen (15) days upon such corporation of his intention so to do.

(e) Moneys collected under this section shall be deposited with the State Treasurer of North Carolina and expended, under the terms of the Executive Budget Act, to defray expenses incurred by the office of the Administrator of Credit Unions in carrying out its supervisory and auditing functions.

(f) All revenue derived from fees will be placed into a special account to be administered solely for the operation of the credit union division. (1915, c. 115, s. 7; C. S., s. 5238; 1925, c. 73, ss. 3, 7; 1935, c. 87; 1941, c. 235; 1955, c. 1135, ss. 3, 4; 1957, c. 989, s. 7; 1965, c. 956, ss. 1, 23, 24; 1969, c. 69, s. 6.)

Editor's Note.—

The 1969 amendment rewrote subsection (c) as previously amended in 1965.

§ 54-107. Annual examinations required; payment of cost.—The Administrator of Credit Unions shall cause every such corporation to be examined once a year and whenever he deems it necessary. The examiners appointed by him shall be given free access to all books, papers, securities, and other sources of information in respect to the corporation; and for the purpose of such examination the Administrator shall have power and authority to subpoena and examine personally, or by one of his deputies or examiners, witnesses on oath and documents, whether such witnesses are members of the corporation or not, and whether such documents are documents of the corporation or not.

Whenever the cost of making the annual examination exceeds the annual fees paid by the credit union to the State, the Administrator may charge the credit union fifty dollars ($50.00) per day, per man for each day required to complete the examination. The Administrator may designate an independent auditing firm to do the work under his direction and supervision, with the cost to be paid by the credit union involved. (1915, c. 115, s. 7; C. S., s. 5239; 1925, c. 73, s. 3; 1935, c. 87; 1965, c. 956, ss. 1, 25; 1969, c. 69, ss. 7, 8.)

Editor's Note. — The 1965 amendment substituted "Administrator" for "Superintendent" in the first paragraph, and added the second paragraph.

The 1969 amendment deleted "more than two times" following "exceeds" in the first sentence of the second paragraph and deleted "except the extra cost of two times the annual fee shall not exceed more than ten percent (10%) of the reserve fund" at the end of the section.

§ 54-108. Revocation of certificate; liquidation.—If any such corporation shall neglect to make its annual report, as provided in this article, or any other report required by the Administrator of Credit Unions for more than fifteen days, or shall fail to pay the charges required, including the fines for delay in filing reports, the Administrator of Credit Unions shall give notice to such corporation of his intention to revoke the certificate of approval of the corporation for such neglect or failure, and if such neglect or failure continues for fifteen days after such notice, the said Administrator shall, at his discretion, personally or by an agent appointed by him, take possession of the property and business of the corporation and retain possession until such time as he may permit it to resume business, or until its affairs be finally liquidated as provided in § 54-92 of this subchapter. (1915, c. 115, s. 7; C. S., s. 5240; 1925, c. 73, ss. 3, 8; 1935, c. 87; 1957, c. 989, s. 8; 1965, c. 956, s. 1.)

Editor's Note.—

The 1965 amendment substituted "Administrator" for "Superintendent" throughout this section.

§ **54-109. When Administrator of Credit Unions may take possession of credit union business and property.**—The Administrator of Credit Unions may forthwith take possession and control of the business and property of any credit union to which this subchapter is applicable whenever he shall find that such credit union:

(1) Is conducting its business contrary to law or the regulations of the Administrator promulgated hereunder;

(2) Has violated its charter or bylaws;

(3) Is conducting its business in an unauthorized or unsafe manner;

(4) Is in an unsound or unsafe condition to transact its business;

(5) Has an impairment of its capital;

(6) Cannot with safety and expediency continue business;

(7) Has neglected or refused to comply with the terms of a duly issued order of the Administrator;

(8) Has suspended the payment of its obligations;

(9) Has refused to submit its books, papers, records, or affairs for inspection to any examiner or agency of the Administrator; or

(10) Has refused to submit a sworn statement verified under oath by its treasurer and/or president or other responsible officers regarding its affairs and upon such inquiries as may be submitted to it by the Administrator.

The Administrator of Credit Unions upon taking possession of the property and business of any credit union for the reasons above set forth shall retain such possession until such time as he may permit it to resume business or he may order that its affairs be finally liquidated, as provided in § 54-92 of this subchapter. The determination of the Administrator shall be subject to judicial review in all respects according to the provisions and procedures set forth in article 33 of chapter 143 of the General Statutes of North Carolina, as amended. (1915, c. 115, s. 7; C. S., s. 5241; 1925, c. 73, ss. 3, 9; 1935, c. 87; 1957, c. 989, s. 9; 1965, c. 956, s. 26.)

Editor's Note.—

The 1965 amendment rewrote this section.

ARTICLE 15.

Central Associations.

§ **54-110. Central association.**—(a) Upon application of seven or more credit unions for a central corporation for the purpose of securing credit and discounting notes with any outside agency, and to act as a clearinghouse in the settlement of these accounts, the Administrator of Credit Unions shall, upon receipt and investigation of charters and bylaws signed by the secretary-treasurers of the several credit unions, approve same if he is satisfied they are in conformity with and give reasonable assurance that the affairs of the corporation will be administered in accordance with this article.

(1965, c. 956, s. 1.)

Editor's Note. — The 1965 amendment substituted "Administrator of Credit Unions" for "Superintendent of Credit Unions" in subsection (a).

As the rest of the section was not affected by the amendment, it is not set out.

SUBCHAPTER IV. CO-OPERATIVE ASSOCIATIONS.

ARTICLE 16.

Organization of Associations.

§ **54-114. Certificate of incorporation.**—The original articles of incorporation of corporations organized under this subchapter, or a true copy thereof, verified as such by the affidavits of two of the signers thereof, shall be filed with the Secretary of State. A like verified copy of such articles and certificate of the Secretary of State, showing the date when such articles were filed with and accepted by the Secretary of State, within thirty days of such filing and acceptance, shall be filed with and recorded by the register of deeds of the county in which the principal place of business of the corporation is to be located, and no corporation shall, until such articles be left for record, have legal existence. The register of deeds shall forthwith transmit to the Secretary of State a certificate stating the time when such copy was recorded. Upon a receipt of such certificate, the Secretary of State shall issue a certificate of incorporation. (1915, c. 144, s. 3; C. S., s. 5245; 1967, c. 823, s. 12.)

Cross Reference.—See Editor's note to § 53-5.

Editor's Note. — The 1967 amendment, effective Jan. 1, 1968, substituted "register of deeds" for "clerk of the superior court" in the second sentence and for "clerk of court" in the third sentence.

§ **54-115. Fees for incorporation.**—For filing the articles of incorporation of corporations organized under this subchapter, there shall be paid the Secretary of State ten dollars and his fees allowed by law, and for the filing of an amendment to such articles, five dollars and his fees allowed by law: Provided, that when the authorized capital stock of such corporations shall be less than one thousand dollars, such fee for filing either the articles of incorporation or amendments thereto shall be two dollars. (1915, c. 144, s. 4; C. S., s. 5246; 1967, c. 823, s. 13.)

Cross Reference.—See Editor's note to § 53-5.

Editor's Note. — The 1967 amendment, effective Jan. 1, 1968, deleted the former last sentence, relating to the fee for recording a copy of the articles.

ARTICLE 18.

Powers and Duties.

§ **54-125. Amendment of articles.**—The association may amend its articles of incorporation by a majority vote of its shareholders at any regular shareholders' meeting, or any special shareholders' meeting called for that purpose, on ten days' notice to the shareholders. The power to amend shall include the power to increase or diminish the amount of capital stock and the number of shares: Provided, the amount of the capital stock shall not be diminished below the amount of the paid-up capital at the time the amendment is adopted. Within thirty days after the adoption of an amendment to its articles of incorporation, an association shall cause a copy of such amendment adopted to be recorded in the office of the Secretary of State and of the register of deeds of the county where the principal place of business is located. (1915, c. 144, s. 7; C. S., s. 5256; 1967, c. 823, s. 14.)

Cross Reference.—See Editor's note to § 53-5.

Editor's Note. — The 1967 amendment, effective Jan. 1, 1968, substituted "register of deeds" for "clerk of the court" in the last sentence.

SUBCHAPTER V. MARKETING ASSOCIATIONS.

ARTICLE 22.

Merger, Consolidation and Other Fundamental Changes.

§ **54-162. Articles of merger or consolidation.** — (a) Upon such approval, articles of merger or articles of consolidation shall be executed by each association and filed as provided in G.S. 55A-4, except that a copy thereof certified by the Secretary of State shall also be recorded in the office of the register of deeds of each county wherein the constituent associations have their principal places of business or their registered offices.

(1967, c. 823, s. 15.)

Cross Reference.—See Editor's note to § 53-5.

Editor's Note. — The 1967 amendment, effective Jan. 1, 1968, substituted "register of deeds" for "clerk of the superior court" in subsection (a).

As subsections (b) and (c) were not changed by the amendment, they are not set out.

Chapter 55.

Business Corporation Act.

Article 4.

Powers and Management.

Sec.
55-19. Indemnification of directors, officers, employees or agents; general provisions.
55-20. Indemnification in actions by outsiders.
55-31. Executive and other committees.
55-36.1. Declaring certain corporate conveyances prior to January 1, 1969 valid.
55-37.1. Form of records.

Article 5.

Corporate Finance.

55-44.1. Rights of holders of debts securities.

Article 6.

Shareholders.

Sec.
55-56. Preemptive rights.

Article 7.

Uniform Stock Transfer Act.

55-75 to 55-98. [Repealed.]

Article 10.

Foreign Corporations.

55-146.1. Alternative jurisdiction over and service of process on foreign corporations.

ARTICLE 1.

General Provisions.

§ **55-1. Title.**

Editor's Note.—

For article reevaluating the Business Corporation Act, see 43 N.C.L. Rev. 768 (1965).

For case law survey as to corporations, see 44 N.C.L. Rev. 950 (1966).

For a note on the liability of directors and officers for negligent management, see 45 N.C.L. Rev. 748 (1967).

§ 55-2. Definitions.

Applied in Cooke v. Outland, 265 N.C. 601, 144 S.E.2d 835 (1965).

§ 55-3. Applicability of chapter.

The provisions of the Business Corporation Act are applicable to domestic banks operating in North Carolina. Cooke v. Outland, 265 N.C. 601, 144 N.C. 835 (1965).

Domestic banking corporations are not expressly excepted from the operation of the Business Corporation Act, and the Supreme Court knows of no "specific statutory provision particularly applicable" to domestic banks operating in North Carolina or inconsistent with some provisions of the Business Corporation Act, so as to make such provision prevail, nor has any such specific statutory provision been called to the Supreme Court's attention. Cooke v. Outland, 265 N.C. 601, 144 S.E.2d 835 (1965).

§ 55-3.1. Effect of acquisition of all shares by less than three persons.

When Corporation Regarded as An Association of Persons.—When the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons. Henderson v. Security Mtge. & Fin. Co., 273 N.C. 253, 160 S.E.2d 39 (1968).

Corporation as Alter Ego of Dominant Shareholder. — The mere fact that one person owns all of the stock of a corporation does not make its acts the acts of the stockholder so as to impose liability therefor upon him. However, when the corporation is so operated that it is a mere instrumentality or alter ego of the sole or dominant shareholder and a shield for his activities in violation of the declared public policy or statute of the State, the corporate entity will be disregarded and the corporation and the shareholder treated as one and the same person, it being immaterial whether the sole or dominant shareholder is an individual or another corporation. Henderson v. Security Mtge. & Fin. Co., 273 N.C. 253, 160 S.E.2d 39 (1968).

Chattel Mortgage Executed in Name of Corporation by Person Acquiring All Stock Is Corporate Act.—Acquisition of the entire capital stock of a corporation by one person does not affect the corporate entity, and the execution in the name of the corporation by such person of a chattel mortgage is a corporate act and binding, provided the rights of its then existing creditors are not affected. Wall v. Colvard, Inc., 268 N.C. 43, 149 S.E.2d 559 (1966).

ARTICLE 2.

Execution and Filing of Certain Corporate Documents.

§ 55-4. Execution of corporate documents for filing; filing, recording and effectiveness.—(a) Whenever the provisions of this chapter require any document relating to a corporation to be executed and filed in accordance with this section, unless otherwise specifically stated in this chapter:

(1) There shall be an original executed document and also one conformed copy.

(2) The said original document shall, if required to be executed by the corporation, be signed by the president or a vice-president and also by the secretary or an assistant secretary, with or without the corporate seal. In the case of a banking corporation, a cashier or an assistant cashier may act in lieu of a secretary or assistant secretary. If required to be executed by designated individuals, each of them shall sign.

(3) Except where the provisions of this chapter specifically require acknowledgment, the said original document shall be verified by each of the individuals signing, whether in a representative capacity or otherwise, by a statement under oath, made before and certified by an official who is authorized under the laws of this State to take acknowledgments, declaring that he signed the said document, that

the statements therein are true, and, in the case of an individual who signed in a representative capacity, declaring the capacity in which he signed and that he was authorized so to sign.

(4) The conformed copy may either extend its conformation with the original document through all the verifications (or acknowledgments, as the case may be) or may in lieu of such extension contain the legend, after the name of the signers substantially as follows: "Original duly verified (acknowledged) by all signers."

(5) The original document so signed and verified (or acknowledged, as the case may be), together with the conformed copy, shall be delivered to the Secretary of State. Unless he finds that it does not conform to law, the Secretary of State shall, when the proper taxes and fees have been tendered, endorse upon the original the word "filed" and the hour, day, month, and year of the filing thereof and shall file the same in his office. The Secretary of State, shall thereupon immediately compare the copy with the original and if he finds that they are identical he shall make upon the conformed copy the same endorsement which appears on the original and shall attach to the copy a certificate stating that attached thereto is a true copy of the document, designated by an appropriate title, filed in his office and showing the date of such filing. He shall thereupon return the copy so certified to the corporation or its representative.

(6) The copy, certified as aforesaid, shall, within sixty days after the receipt by the corporation or its representative be delivered to the register of deeds of the county wherein the corporation has its registered office, and, when the proper fees shall have been tendered, it shall be recorded and properly indexed in a book to be known as the Record of Incorporations. Promptly after the recordation, the register of deeds shall note the fact of recordation on the said copy and return it to the corporation or its representative.

(b) Any such document required to be filed shall be completely effective when endorsed by the Secretary of State as provided in subsection (a)(5) above and the transaction to be effectuated thereby shall thereupon be deemed to be completely consummated as if all the required recording had been perfected, provided, however, that in lieu of the time of such endorsement by the Secretary of State, such document may fix an hour, day, month and year not more than twenty days subsequent to the endorsement of the Secretary of State and the transaction shall be deemed to be completely consummated at the time fixed by such document as if all the required recording had been perfected. Unless otherwise provided in this chapter with respect to some specific document, failure to deliver it for recording in the office of the register of deeds shall only subject the corporation to a penalty of one hundred dollars ($100.00) to be collected by the Secretary of State.

(c) It shall be the duty of the Secretary of State, whenever so requested and upon tender of the proper fees, to certify as aforesaid any true copy of any such document on file in his office or, if such be the request, to make or cause to be made typewritten or photostatic copies of such documents and to certify the same as aforesaid. (1955, c. 1371, s. 1; 1967, c. 13, s. 1; c. 823, s. 16.)

Cross Reference.—See Editor's note to § 53-5.

Editor's Note.—

The first 1967 amendment rewrote subsection (b).

The second 1967 amendment, effective Jan. 1, 1968, substituted "register of deeds" for "clerk of the superior court" in the first sentence and for "clerk" in the second sentence of subdivision (6) of subsection (a) and for "clerk of the superior court" in subsection (b).

ARTICLE 3.

Formation, Name and Registered Office.

§ **55-6. Incorporators.**—One or more natural persons, whether or not residents of this State, of the age of 21 years or more may act as incorporators of a corporation by signing and acknowledging articles of incorporation, which shall be filed in accordance with the provisions of G.S. 55-4. The acknowledgment shall be before an officer duly authorized under the laws of this State to take the proof or acknowledgment of deeds. (Code, ss. 677, 678, 679, 682; 1885, cc. 19, 190; 1893, c. 318; 1897, c. 204; 1901, c. 2, ss. 8, 9; cc. 6, 41; 1903, c. 453; Rev., ss. 1137, 1139; C. S., s. 1114; 1945, c. 635; G. S., ss. 55-2, 55-3; 1951, c. 265, s. 1; 1955, c. 1371, s. 1; 1969, c. 751, s. 1.)

Editor's Note. — The 1969 amendment, effective Oct. 1, 1969, substituted "One" for "Three" at the beginning of the section.

§ **55-8. Corporate existence; filing of articles of incorporation; effect.**—The time when corporate existence begins is determined by the provisions of G.S. 55-4, and a copy of the articles certified by the Secretary of State shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this chapter, except as against this State in a proceeding to annul or revoke the articles of incorporation. (1901, c. 2, s. 10; Rev., s. 1140; C. S., s. 1116; G. S., s. 55-4; 1955, c. 1371, s. 1; 1957, c. 550, s. 3; 1967, c. 13, s. 3.)

Editor's Note.—

The 1967 amendment rewrote this section.

§ **55-7. Articles of incorporation.**

(9) The number of directors constituting the initial board of directors (who may be classified in accordance with the provisions of G.S. 55-26) and the name and address, including street and number, if any, of each person who is to serve as a director until the first meeting of shareholders or until his successor be elected and qualified.

(1969, c. 751, s. 2.)

Editor's Note.—

The 1969 amendment, effective Oct. 1, 1969, rewrote subdivision (9).

As the rest of the section was not changed by the amendment, only subdivision (9) is set out.

§ **55-11. Organization meeting of directors.**—After the filing of the articles of incorporation in the office of the Secretary of State, an organization meeting of the board of directors named in the articles of incorporation shall be held, either within or without this State, at the call of a majority of the directors, for the purpose of adopting bylaws, electing officers, and the transaction of such other business as may come before the meeting. The directors calling the meeting shall give at least three days' notice thereof by mail to each director so named, which notice shall state the time and place of the meeting, unless notice is waived as hereinafter provided. Any action permitted to be taken at the organization meeting may be taken without a meeting of the board of directors and shall be deemed board action if it complies with the requirements of G.S. 55-29. (Code, s. 665; 1901, c. 2, s. 18; Rev., s. 1142; C. S., s. 1118; G. S., s. 55-6; 1955, c. 1371, s. 1; 1969, c. 751, s. 3.)

Editor's Note. — The 1969 amendment, effective Oct. 1, 1969, added the last sentence.

§ **55-12. Corporate name.**

(c) The corporate name shall not, subject to the provisions of G.S. 55-137 (c), be the same as, or deceptively similar to, the name of any domestic corporation or of any foreign corporation authorized to transact business in this State, or a name the exclusive right to which is, at the time, reserved or registered by some other person in the manner prescribed in this section.

(f) The reservation of name, pursuant to subsections (d) and (e) of this section, shall be made by filing with the Secretary of State a verified application therefor stating the name and address of the applicant, and the Secretary of State shall, upon tender of the fee hereinafter prescribed, reserve the name exclusively for the applicant unless he finds that the name is not available under the provisions of this section.

(h) Any foreign corporation not transacting business in this state may register its corporate name, if, not prohibited by this section, by filing with the Secretary of State a verified application therefor setting forth the name and address of the principal office of the corporation, the jurisdiction in which it is incorporated, the date of its incorporation, a statement that it is organized and doing business in good standing under the laws of the jurisdiction in which it is incorporated, and a brief statement of the business in which it is engaged; and the Secretary of State shall, upon tender of the fee prescribed by G.S. 55-155(a) (1), register the name exclusively for the use of such foreign corporation, unless he finds that the name is not available under the provisions of this section. Such registration shall be effective for a period of one year, and it may be renewed from year to year, not to exceed ten years, by filing with the Secretary of State a verified renewal application setting forth the same facts required to be set forth in the original application for registration. Any renewal application filed after the expiration of the registration shall be treated as a new application for registration.

(i) The Secretary of State may revoke any reservation or registration of a corporate name if he finds, upon a hearing held not less than five days after written notice has been sent by registered mail to the person or corporation who made the reservation or registration, that the application therefor or any transfer thereof was not made in good faith or that any statement contained in the application for reservation or registration was false when such application was filed or has thereafter become false.

(j) The use by a corporation of a name in violation of this section may be enjoined notwithstanding the filing of its articles by the Secretary of State. (1901, c. 2, s. 8; 1903, c. 453; Rev., s. 1137; 1913, c. 5, s. 1; C. S., s. 1114; 1935, cc. 166, 320; 1939, c. 222; G. S., s. 55-2; 1955, c. 1371, s. 1; 1959, c. 1316, s. 28; 1969, c. 751, ss. 4-6.)

Editor's Note.—

The 1969 amendment, effective Oct. 1, 1969, inserted "or registered" and substituted "by" for "to" near the end of subsection (c), inserted "stating the name and address of the applicant" near the middle of subsection (f), inserted present subsections (h) and (i) and redesignated former subsection (h) as (j).

Only the subsections added or changed by the amendment are set out.

§ 55-13. Registered office and registered agent.

Stated in Jewel Box Stores Corp. v. Morrow, 272 N.C. 659, 158 S.E.2d 840 (1968).

§ 55-14. Change of registered office or registered agent.

(e) In lieu of the procedure set out in subsection (a) above the location of the registered office of a domestic corporation may be changed from one address to another in the same city or town in this State upon the change of the business office of its registered agent, upon the making and executing by the registered agent of such corporation of a certificate, duly acknowledged before an officer authorized by the laws of this State to take acknowledgments of deeds, setting forth the name of each corporation represented by such registered agent and the address at which such registered agent has maintained a registered office for each of such corporations and further certifying to the new address to which such registered office will be transferred on a given day and at which new address such registered agent will thereafter maintain the registered office of each of the corporations recited in the certificate. Such certificate shall be filed in duplicate in the office of the Secretary of State who shall then furnish a certified copy of the same, showing the date of such filing, and shall return the copy so certified to the registered agent, and the copy, certified as aforesaid, shall, within 60 days after the receipt by the registered agent be delivered to the register of deeds of the county wherein the corporation has its registered office, and, when the proper fees shall have been tendered, it shall be recorded and properly indexed in a book to be known as the Record of Incorporations. Promptly after the recordation, the register of deeds shall note the fact of recordation on the said copy and return it to the registered agent. The fee to be charged by the Secretary of State for the filing of such certificate shall be a fee of three dollars ($3.00) for each corporation listed in said certificate. (1901, c. 2, s. 31; Rev., s. 1176; C. S., s. 1133; G. S., s. 55-34; 1955, c. 1371, s. 1; 1957, c. 979, ss. 6, 7; 1965, c. 298, s. 1; 1967, c. 823, s. 17.)

Cross Reference.—See Editor's note to § 53-5.

Editor's Note.—

The 1965 amendment added subsection (e).

The 1967 amendment, effective Jan. 1, 1968, substituted "register of deeds" for "clerk of the superior court" in the second sentence and for "clerk" in the third sentence of subsection (e).

As only subsection (e) was affected by the amendments, the rest of the section is not set out.

For note on the 1965 amendments to this chapter, see 44 N.C.L. Rev. 1106 (1966).

ARTICLE 4.

Powers and Management.

§ 55-17. General powers.

(b) In connection with carrying out the purposes stated in its charter, and subject to any limitation prescribed by this chapter or by its charter, every corporation shall also have power:

(1) To acquire, by purchase, lease, gift, will or otherwise, and to own, hold, improve, use and otherwise deal in and with, real and personal property, or any interest therein, wherever situated.

(2) To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets.

(3) To enter into contracts of guaranty or suretyship or make other financial arrangements for the benefit of any person, firm or corporation.

(4) To provide insurance for its benefit on the life or physical or mental ability of any of its officers or employees or on the life or physical or mental ability of any security holder for the purpose of acquiring at his death or disability its securities owned by such security holder, and for these purposes the corporation is deemed to have an insurable interest in its officers, employees, or security holders; and to provide insurance for its benefit on the life or physical or mental ability of any other person in whom it has an insurable interest.

(5) To acquire, by purchase, subscription, gift, will or otherwise, and to own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, associations, partnerships or individuals, or direct or indirect obligations of the United States or of any government, state, territory, governmental district or municipality or of any instrumentality thereof.

(6) To enter into any arrangement with others for the sharing of profits or union of interest with respect to any transaction, operation or venture

which the corporation has power to conduct by itself, even if such arrangement involves sharing or delegation of control of such transaction, operation or venture with or to others.

(7) To make contracts and incur liabilities, borrow money, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge or other form of security upon all or any of its property, franchises and income.

(8) To lend money for its corporate purposes, invest its funds from time to time, and take and hold real and personal property as security for the payment of funds so loaned or invested.

(9) To conduct its business, carry on its operations, and have offices and exercise the powers granted by this chapter anywhere in the world.

(10) To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

(1969, c. 751, ss. 7, 8.)

I. IN GENERAL.

Editor's Note.—

The 1969 amendment, effective Oct. 1, 1969, substituted "any person, firm or corporation" for "its personnel or customers or suppliers" at the end of subdivision (3) and rewrote subdivision (4) of subsection (b).

As subsections (a) and (c) were not changed by the amendment, they are not set out.

As a general rule, a corporation may use or adopt any seal. Security Nat'l Bank v. Educators Mut. Life Ins. Co., 265 N.C. 86, 143 S.E.2d 270 (1965).

And May Adopt Seal for Special Occasion. — If a corporation adopts a seal different from its corporate seal tor a special occasion, or if it has no corporate seal, the seal adopted is the corporate seal for the time and the occasion. Security Nat'l Bank v. Educators Mut Life Ins. Co., 265 N.C. 86, 143 S.E.2d 270 (1965).

Any Device, etc.—

A corporate seal may consist of anything found upon a paper and which appears to have been put there by due authority or to have been adopted and used by such authority as and for the seal of the corporation. Security Nat'l Bank v. Educators Mut. Life Ins. Co., 265 N.C. 86, 143 S.E.2d 270 (1965).

Burden of Proof as to Seal on Contract and Statute of Limitations.—The burden is upon plaintiffs to prove that the action accrued within the time limited by § 1-47, by showing that the company adopted the seal appearing on the contract for the special occasion or for all similar occasions, or that such seal became the seal of the corporation by reason of some other rule of law, or that the regular corporate seal was impressed or attached to the original of the contract, or that there are facts and circumstances which exclude the operation of the 3-year statute, § 1-52, other than the matter of a seal. Security Nat'l Bank v. Educators Mut. Life Ins. Co., 265 N.C. 86, 143 S.E.2d 270 (1965).

§ 55-18. Defense of ultra vires.

The doctrine of ultra vires, etc.—

This section has curtailed to a considerable degree the doctrine of ultra vires. Piedmont Aviation, Inc. v. S & W Motor Lines, Inc., 262 N.C. 135, 136 S.E.2d 658 (1964).

§ 55-19. Indemnification of directors, officers, employees or agents; general provisions.—(a) Except as indemnification of a director or officer of a corporation is permitted by this section or by G.S. 55-20 and 55-21, no provision, hereafter made or adopted, whether contained in the charter, the bylaws, a resolution, a contract or otherwise, whereby the corporation purports to exempt or indemnify any director or officer of a corporation with respect to any liability or litigation expenses arising out of his activities as director or officer shall be valid.

(b) As used in this section and in G.S. 55-20 and 55-21, the term "officer" includes any dominant shareholder engaged to perform services for the corporation, whether as employee or independent contractor; and the term "person" includes the legal representative of such person.

(c) Anything in this section or in G.S. 55-20 or 55-21 to the contrary notwithstanding, a corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability.

(d) Expenses incurred by a director, officer, employee or agent in defending a civil or criminal action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding as authorized by the board of directors in the specific case upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the corporation as authorized in this section. (1955, c. 1371, s. 1; 1969, c. 797, s. 1.)

Editor's Note. — The 1969 amendment inserted "by this section or" in subsection (a), added the definition of "person" in subsection (b), and added subsections (c) and (d).

§ 55-20. Indemnification in actions by outsiders.—(a) When because of his duties or activities while serving as director, officer, employee or agent of a corporation, or in any such capacity at the request of the corporation in any other corporation, partnership, joint venture, trust or other enterprise, any person is or was a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceedings, whether civil, criminal, administrative or investigative, not brought by the corporation nor brought by any party seeking derivatively to enforce a liability of such a person to the corporation, such person shall be entitled to indemnification or reimbursement by the corporation for any expenses, including attorneys' fees, or any liabilities which he may have incurred in consequence of such action, suit or proceeding, under the following conditions:

(1) If such person is wholly successful in his defense on the merits, or if the proceeding is an administrative or investigative proceeding which does not result in the indictment, fine or penalty of such person, he shall be entitled to reimbursement from the corporation of all his reasonable expenses of defense or participation, including attorneys' fees.

(2) If such person is wholly successful in his defense otherwise than solely on the merits, the corporation may pay or agree to pay to him such expenses of defense or participation, including attorneys' fees, as the board of directors in good faith shall deem reasonable, regardless of any adverse interest of any or all the directors.

(3) If such person is not wholly successful or is unsuccessful in his defense, or the proceeding to which he is a party results in his indictment, fine or penalty, the corporation may pay or agree to pay, in whole or in part, such expenses of defense or participation, including attorneys' fees, and the amount of any judgment, money decree, fine, penalty or settlement for which he may have become liable, if

a. A plan for such payment is approved by a consent in writing signed by the holders of all shares entitled to vote or such plan is sent to the holders of all shares entitled to vote, with notice of a shareholders' meeting, whether annual or special, to be held to take action thereon and if at such meeting a plan is approved by the holders of a majority of such shares, exclusive of the shares held directly or indirectly by any persons to be benefited by the plan if approved, or

b. A majority of a quorum consisting of directors who are not parties to such action, suit or proceeding shall determine that such person acted in good faith and in a manner he reasonably believed to be in the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful, or

c. In a proceeding brought by such person for such determination in the superior court of the district where the corporation has its registered office it shall be determined that such person acted in good faith and in a manner he reasonably believed to be in the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. In such a proceeding, the court in its discretion may order notice thereof to be sent to the shareholders of the corporation in such manner and in such form as it may deem appropriate, at the expense of the corporation; and and it may allow all shareholders so notified to be heard in opposition to the determination requested.

(b) The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful. (1955, c. 1371, s. 1; 1969, c. 797, s. 2.)

Editor's Note. — The 1969 amendment rewrote this section.

§ 55-21. Indemnity for litigation expenses in corporate action.—(a) When a present or former director, officer, employee or agent of a corporation or any person who has served or is serving in such capacity at the request of the corporation in any other corporation, partnership, joint venture, trust or other enterprise, is sued, alone or with others, in the courts of this State, in any action seeking to establish his liability to the corporation arising out of his alleged dereliction of duty to the corporation, he shall in turn be entitled to indemnification or reimbursement from the corporation for so much of his expenses of defense, including attorneys' fees, as the court in its discretion, upon motion for indemnification or reimbursement, duly made in such action, finds to be reasonable, if:

(1) Such person is successful in whole or in part in the action against him or in any settlement thereof and the court finds that his conduct fairly and equitably merits such relief; or

(2) The court finds, despite his adjudication of liability, that such person has acted honestly and reasonably and that, in view of all the circumstances of the case, his conduct fairly and equitably merits such relief.

(1969, c. 797, s. 3.)

Editor's Note. — The 1969 amendment rewrote subsection (a).

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

§ 55-22. Loans and guaranties.—(a) Subject to the provisions of subsection (b) hereof, except with the consent of the holders of a majority of all the shares outstanding, regardless of limitation on voting rights, other than the shares held by the adversely interested party, a corporation shall not, directly or indirectly, make any loan of money or property to, or guarantee or otherwise secure the obligation of:

(1) Any directors or officers of the corporation; or

(2) Any corporation of which the officers and directors of the lending or

securing corporation own more than fifty percent (50%) of the outstanding securities of any class; or

(3) Any dominant shareholder or any other corporation of which said shareholder is a dominant shareholder, unless that corporation is a subsidiary of the lending or securing corporation; or

(4) Any person upon the security of the shares of any corporation mentioned in subdivisions (2) and (3) of this subsection. A sale on credit in the ordinary course of business is not a loan within the meaning of this section.

(b) If all shareholders, regardless of limitation on voting rights, are adversely interested in the proposed loan, guaranty, or other form of security, such transaction may be entered into by the corporation only with the consent of all such shareholders.

(c) The provisions of this section do not apply to loans, guaranties, or other forms of security extended by banks, industrial banks, building and loan associations, land and loan associations, credit unions or insurance companies, or to loans permitted under any statute regulating any special class of corporations. (1955, c. 1371, s. 1; 1959, c. 1316, s. 6; 1961, c. 198; 1969, c. 751, s. 9.)

Editor's Note.—

The 1969 amendment, effective Oct. 1, 1969, rewrote the introductory paragraph of subsection (a), inserted present subsection (b) and redesignated former subsection (b) as (c).

§ 55-24. Board of directors.

Directors' Right of Management Is Subject to Stockholders Lawful Agreements.—Under subsection (a) the board of directors is given the right to manage the affairs of the corporation subject to the provisions of the charter, the bylaws or agreements between the shareholders otherwise lawful. Wilson v. McClenny, 262 N.C. 121, 136 S.E.2d 569 (1964).

Such Agreements on Voting Are Valid Unless There Is Fraud or Prejudice. — The Business Corporation Act clearly aligns North Carolina with the majority of jurisdictions which hold that a contract entered into between corporate stockholders by which they agree to vote their stock in a specified manner—including agreements for the election of directors and corporate officers—is not invalid, unless it is inspired by fraud or will prejudice the other stockholders. Wilson v. McClenny, 262 N.C. 121, 136 S.E.2d 569 (1964).

Agreements for Future Management Must Be "Otherwise Lawful."—Both this section and § 55-73 require that contemplated agreements providing for the future management and control of a corporation be "otherwise lawful." Wilson v. McClenny, 262 N.C. 121, 136 S.E.2d 569 (1964).

When Such Agreements Will Be Declared Invalid. — Agreements providing for the future management and control of a corporation which violate the express charter or statutory provision, contemplate an illegal object, involve any fraud, oppression or wrong against other stockholders, or are made in consideration of a private benefit to the promisor, will be declared invalid. Wilson v. McClenny, 262 N.C. 121, 136 S.E.2d 569 (1964).

Same Good Faith Required of Promoters as Directors. — The promoters of a corporation occupy a relation of trust and confidence towards the corporation which they are calling into existence as well as to each other, and the law requires of them the same good faith it exacts from directors and other fiduciaries. Wilson v. McClenny, 262 N.C. 121, 136 S.E.2d 569 (1964).

§ 55-25. Number, election and term of directors.—(a) The number constituting the board of directors shall not be fewer than three, except that the initial board of directors fixed by the articles of incorporation may be fewer than three until the issuance of shares and except also that if and so long as all the shares of a corporation are owned of record by either one or two shareholders the number of directors may be fewer than three but not fewer than the number of such shareholders. The number constituting the initial board of directors shall be fixed by the articles of incorporation. In the absence of a provision in the articles of incorporation, the charter, or the bylaws fixing the number of directors, the number shall be the same as that fixed in the articles of incorporation for the initial board of directors, subject to the provisions of this section. The articles of incorporation, the charter, or the bylaws may provide for a maximum and minimum number of directors, and, if so, shall designate the manner in which such number shall from time to time be determined. If the fixing of a maximum and minimum number of directors is authorized, the articles of incorporation, the charter, or the bylaws may provide that any directorships not filled by the shareholders shall be treated as vacancies to be filled by and in the discretion of the board of directors.

(b) The number of directors may be increased or decreased from time to time only by amendment to the charter or to the bylaws adopted by the shareholders, but no such decrease shall be made when the number of shares voting against the proposal for decrease would be sufficient to elect a director if such shares could be voted cumulatively at an annual election. Whenever a class or a series of shares is entitled to elect one or more directors under authority granted by the charter, the provisions of this paragraph apply to the vote of that class or series for such election and not to the vote of the outstanding shares as a whole.

(c) The first board of directors shall consist of those named in the articles of incorporation. Thereafter directors shall be elected at the first meeting of the shareholders held for that purpose and at each subsequent annual meeting.

(d) Each director shall hold office for the term for which he is elected and until his successor shall have been elected and qualified.

(e) If any shareholder so demands, election of directors by the shareholders shall be by ballot, unless the charter or the bylaws otherwise provide.

(f) The number of votes necessary to elect a director and the procedure for election of directors are governed by the provisions of G.S. 55-67 (c). (1901, c. 2, ss. 14, 39; Rev., ss. 1147, 1182; C. S., ss. 1144, 1175; 1927, c. 138; G. S., ss. 55-48, 55-112; 1955, c. 1371, s. 1; 1959, c. 1316, s. 33; 1969, c. 751, ss. 10, 11.)

Editor's Note.—

The 1969 amendment, effective Oct. 1, 1969, rewrote subsection (a) and added subsection (f).

§ 55-26. Staggered board of directors.—When the board of directors shall consist of nine or more members, in lieu of electing the whole number of directors annually, it may be provided in the charter or in the bylaws adopted by the shareholders that the directors be staggered by division into either two or three classes, each class to be as nearly equal in number as possible, the term of office of directors of the first class to expire at the first annual meeting of shareholders after their election, that of the second class to expire at the second annual meeting after their election, and that of the third class, if any, to expire at the third annual meeting after their election. At each annual meeting after such classification the number of directors equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the second succeeding annual meeting, if there be two classes, or until the third succeeding annual meeting, if there be three classes. No such classification of directors shall, unless made in the charter, be effective prior to the first annual meeting of shareholders. Boards of directors may also be classified otherwise than by staggering. Corporations having a lawfully staggered or otherwise classified board of directors when this chapter goes into effect may continue their existing classification even though not conforming to this section. (1901, c. 2, ss. 14, 44; Rev., ss. 1147, 1148; C. S., s. 1144; 1937, c. 179; 1945, c. 200; 1949, c. 917; G. S., s. 55-48; 1955, c. 914, s. 1; 1955, c. 1371, s. 1; 1959, c. 1316, s. 7.)

Editor's Note.—

This section is set out to correct a typographical error in the replacement volume.

§ 55-27. Vacancies and removal of directors.

(c) Unless the charter or the bylaws otherwise provide, vacancies may be filled by a majority of the remaining directors even though less than a quorum or by a sole remaining director. If a vacancy occurs with respect to a director who had been elected by the votes of a particular class of shares voting as a class, the vacancy shall be filled by the remaining directors or the remaining sole director elected by that class. A vacancy created by an increase in the authorized number of directors shall be filled only by election at an annual meeting or at a special meeting of shareholders called for that purpose, except as provided in G.S. 55-25 (a).

(1959, c. 1316, s. 34.)

Editor's Note.—

Subsection (c) is set out to correct a typographical error in the replacement volume.

As the rest of the section was not affected, it is not set out.

§ 55-28. Directors' meetings.

(d) A majority of the number of directors fixed by the charter or bylaws shall constitute a quorum for the transaction of business unless a greater number is required by the charter or the bylaws. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by this chapter, the charter or the bylaws. (1955, c. 1371, s. 1; 1969, c. 751, s. 12.)

Editor's Note. — The 1969 amendment, effective Oct. 1, 1969, inserted "this chapter" near the end of subsection (d).

As the rest of the section was not changed by the amendment, only subsection (d) is set out.

Cited in S & W Realty & Bonded Commercial Agency v. Duckworth & Shelton, Inc., 274 N.C. 243, 162 S.E.2d 486 (1968).

§ 55-30. Director's adverse interest.

The words "corporate transaction" were intended to apply to a situation where the corporate director is dealing directly with the corporation. Smith v. Robinson, 343 F.2d 793 (4th Cir. 1965).

A corporate officer acts in a fiduciary capacity and cannot profit at the expense of the corporation. Smith v. Robinson, 343 F.2d 793 (4th Cir. 1965.)

Adversely Interested Party Must Prove Transaction Was Fair.—While it is true that the North Carolina law and the general law do not prohibit corporate officers from dealing with the corporation, the adversely interested party must prove that the transaction was fair, just and reasonable when entered into. Smith v. Robinson, 243 F.2d 793 (4th Cir. 1965).

Applied in S & W Realty & Bonded Commercial Agency v. Duckworth & Shelton, Inc., 274 N.C. 243, 162 S.E.2d 486 (1968).

§ 55-31. Executive and other committees.—(a) Unless otherwise provided in the charter or a bylaw adopted by the shareholders, the board of directors, by resolution adopted by a majority of the number of directors then in office may designate from among its members an executive committee and one or more other committees, each consisting of two or more directors, and each of which, to the extent provided in the resolution or in the charter or the bylaws of the corporation, shall have and may exercise all of the authority of the board of directors in the management of the corporation, except that no such committee shall have authority as to the following matters:

(1) The dissolution, merger or consolidation of the corporation; or the sale, lease or exchange of all or substantially all of the property of the corporation.

(2) The designation of any such committee or the filling of vacancies in the board of directors or in any such committee.

(3) The fixing of compensation of the directors for serving on the board or on any such committee.

(4) The amendment or repeal of the bylaws, or the adoption of new bylaws.

(5) The amendment or repeal of any resolution of the board which by its terms shall not be so amendable or repealable.

(b) Any such committee, or any member thereof may be discharged or removed by action of a majority of the board of directors pursuant to the provisions of G.S. 55-28 (d) or G.S. 55-29.

(c) The designation of any such committee and the delegation thereto of authority shall not operate to relieve the board of directors or any member thereof, of any responsibility or liability imposed upon it or him by law. (1955, c. 1371, s. 1; 1969, c. 751, s. 13.)

Editor's Note. — The 1969 amendment, effective Oct. 1, 1969, rewrote this section.

Cited in S & W Realty & Bonded Commercial Agency v. Duckworth & Shelton, Inc., 274 N.C. 243, 162 S.E.2d 486 (1968).

§ 55-32. Liability of directors in certain cases.

Primary Right to Enforce Liabilities Lies in Corporation.—North Carolina statutory law has not changed, but rather has codified the rule that the primary right of enforcement of liabilities to the corporation lies in the corporation, and as such the corporation is the real party in interest and a necessary party to such action. Underwood v. Stafford, 270 N.C. 700, 155 S.E.2d 211 (1967).

Creditor or Stockholder Cannot Maintain Action without First Demanding Suit by Corporation.—Where the alleged breach or injuries are based on duties owed to the corporation and not to any particular creditor or stockholder, the creditor or stockholder cannot maintain the action without a demand on the corporation, or its receiver if insolvent, to bring the suit and a refusal to do so, and a joinder of the corporation as a party. Underwood v. Stafford, 270 N.C. 700, 155 S.E.2d 211 (1967).

§ 55-33. Jurisdiction over and service on nonresident director.

Interpretation and Validity of Section Depend on Facts.—Questions as to the interpretation and validity of this section must be considered in relation to specific factual situations. Lane Trucking Co. v. Haponski, 260 N.C. 514, 133 S.E.2d 192 (1963).

Subsection (c) Refers to Actions against Director as Such.—Subsection (c) refers to (1) actions in which a former resident of this State who was and is a director of a domestic corporation is a necessary or proper party in his capacity as such director; and (2) actions by shareholders or creditors against a director for violation of his duty as such director. Lane Trucking Co. v. Haponski, 260 N.C. 514, 133 S.E.2d 192 (1963).

It Is Inapplicable to Action against One Not Director or for Actions after Removal.—Subsection (c) has no application to an action against a person who is not a director of a corporation at the time the action is instituted, or to an action which seeks recovery against a director for alleged wrongful conduct subsequent to his removal from office as director. Lane Trucking Co. v. Haponski, 260 N.C. 514, 133 S.E.2d 192 (1963).

When It Applies, Subsection (d) Provides Method of Service.—When subsection (c) is applicable, subsection (d) provides the exclusive method of service of process. Lane Trucking Co. v. Haponski, 260 N.C. 514, 133 S.E.2d 192 (1963).

§ 55-35. Duty of directors and officers to corporation.

Editor's Note.—For a note on the liability of directors and officers for negligent management, see 45 N.C.L. Rev. 748 (1967).

For note on the fiduciary duty of interested directors and the business judgment rule, see 45 N.C.L. Rev. 755 (1967).

Directors owe the corporation fidelity and the duty to use due care in the management of its business. Wilson v. McClenny, 262 N.C. 121, 136 S.E.2d 569 (1964).

§ 55-36. Execution of corporate instruments; authority and proof.

Authority of Agent Must Be Ascertained.—A party relying upon the authority of an agent to act for his principal under subsection (e) must ascertain the extent of such agent's authority. Nationwide Homes of Raleigh, N.C., Inc. v. First-Citizens Bank & Trust Co., 262 N.C. 79, 136 S.E.2d 202 (1964).

But Principal Is Liable for Agent's Acts within Apparent Scope of Authority. — A principal is liable not only for acts expressly authorized but also for acts within the apparent scope of the authority with which the principal has clothed the agent. Nationwide Homes of Raleigh, N.C., Inc. v. First-Citizens Bank & Trust Co., 262 N.C. 79, 136 S.E.2d 202 (1964).

Quoted in Krechel v. Mercer, 262 N.C. 243, 136 S.E.2d 608 (1964).

Cited in Wall v. Colvard, Inc., 268 N.C. 43, 149 S.E.2d 559 (1966).

§ 55-36.1. Declaring certain corporate conveyances prior to January 1, 1969 valid.—Any deed, deed of trust, or other conveyance for land in this State made on behalf of a corporation prior to January 1, 1969, where the president or vice-president has appeared before a notary public and the secretary or assistant secretary has attested and placed the corporate seal of such corporation upon the instrument and the instrument was executed by the president or vice-president on behalf of such corporation by its authority duly given and said certificate recites that the secretary or assistant secretary acknowledges the instrument to be the act and deed of the corporation, in the absence of an acknowledgment of the president or vice-president, the instrument and acknowledgment being otherwise regular, is hereby declared to be a good and valid deed or conveyance by such corporation for all purposes, and shall be admitted to probate and registration, and shall pass title to the property therein conveyed to the grantee as fully as if said deed, deed of trust, or other conveyance were executed according to the provisions and forms of law in force in this State at the date of the execution of said deed, deed of trust or other conveyance. (1969, c. 953, s. 1.)

Editor's Note.—Session Laws 1969, c. 953, s. 1½, provides that the act shall not apply to pending litigation.

§ 55-37. Books and records.

When Proceedings May Be Proved by Parol Testimony.—When it is shown that no minutes were made of a particular meeting, or that they are incomplete, the proceedings may be proved by parol testimony. S & W Realty & Bonded Commercial Agency v. Duckworth & Shelton, Inc., 274 N.C. 243, 162 S.E.2d 486 (1968).

Application to Building and Loan Associations.—The provisions of this section concerning shareholders' lists, and § 55-64, concerning voting lists, are applicable to savings and loan associations, and mandamus is expressly authorized by subsection (b) of this section to compel compliance. Cooke v. Outland, 265 N.C. 601, 144 S.E.2d 835 (1965).

§ 55-37.1. Form of records.—Any records maintained by a corporation in the regular course of its business, including its stock ledger, books of account, and minute books, may be kept on, or be in the form of, punch cards, magnetic tape, photographs, microphotographs, or any other information storage device; provided that the records so kept can be converted into clearly legible form within a reasonable time. Any corporation shall so convert any records so kept upon the request of any person entitled to inspect the same. Where records are kept in such manner, the cards, tapes, photographs, microphotographs or other information storage device together with a duly authenticated print-out or translation shall be admissible in evidence, and shall be accepted for all other purposes, to the same extent as an original written record of the same information would have been. (1969, c. 751, s. 14.)

Editor's Note. — Session Laws 1969, c. 751, s. 47, makes this section effective Oct. 1, 1969.

§ 55-38. Examination and production of books, records and information.

(i) Provided that nothing in this section shall be construed to authorize a shareholder of a banking corporation to examine the deposit records or loan records of a bank customer, except upon order of a court of competent jurisdiction for good cause shown. (1901, c. 2, s. 49; Rev., s. 1179; C. S., s. 1172; G. S., s. 55-109; 1955, c. 1371, s. 1; 1965, c. 609.)

Editor's Note.—The 1965 amendment added subsection (i).

As the other subsections were not changed by the amendment, they are not set out.

For note on the 1965 amendments to this chapter, see 44 N.C.L. Rev. 1106 (1966).

The purpose of this section was to define with some definiteness the rights of inspection of shareholders and to impose some safeguards against fishing expeditions, especially by recent transferees. Cooke v. Outland, 265 N.C. 601, 144 S.E.2d 835 (1965).

It Applies to Banks.—The 1965 amendment to this section shows that the General Assembly considered the provisions of this section applicable to banking corporations. Cooke v. Outland, 265 N.C. 601, 144 S.E.2d 835 (1965).

Stockholders Have Right to Inspect Books.—Since the stockholders are, in a sense, the beneficial owners of the corporate assets, and thus the persons primarily interested in seeing that the concern is efficiently and profitably managed, it has generally been held that they are entitled to inspect the books and records in order to investigate the conduct of the management, determine the financial condition of the corporation, and generally take an account of the stewardship of the officers and directors, at least where there are circumstances justifying some suspicion of mismanagement. Cooke v. Outland, 265 N.C. 601, 144 S.E.2d 835 (1965).

But Fishing Expedition Is Not Authorized.—This section does not give a stockholder an absolute right of inspection and examination for a mere fishing expedition, or for a purpose not germane to the protection of his economic interest as a shareholder in the corporation. Cooke v. Outland, 265 N.C. 601, 144 S.E.2d 835 (1965).

When Mandamus Proper.—The writ of mandamus should not be granted for speculative purposes, or to gratify idle curiosity, or to aid a blackmailer, but it may not be denied to the stockholder who seeks the information for legitimate purposes. Cooke v. Outland, 265 N.C. 601, 144 S.E.2d 835 (1965).

ARTICLE 5.

Corporate Finance.

§ 55-40. Authorized shares and restrictions thereon.

(c) Notwithstanding the provisions of subsection (a) (2) of this section, authorizing the issuance of shares entitling the holders thereof to noncumulative or partially cumulative dividends, noncumulative preferred shares of a class out of which shares were initially issued after June 30, 1957, and before October 1, 1969, shall be entitled to a dividend credit, as defined in this chapter, and until such dividend credit is fully discharged no dividend shall be paid to any shares that are subordinate to such preferred shares as to dividends.

(d) Unless the provisions of the charter or of resolutions fixing the characteristics of shares clearly indicate otherwise, if noncumulative shares, whether issued before or after the enactment of this chapter, are entitled to preferential payments on liquidation or dissolution, the amount of any then existing dividend credit shall be added to the said preferential payment.

(e) Except in cases falling within G.S. 55-52 (b) (4) or (5), no shares shall be hereafter authorized which purport to be redeemable at the election of the holder or which at the election of the holder purport to change his status to that of a creditor either at a designated time or upon a designated contingency. Nothing herein shall invalidate mandatory sinking fund requirements for the application of net earnings to the redemption of shares. This subsection shall not apply to building and loan associations or to land and loan associations. (1901, c. 2, s. 19; 1903, c. 660, ss. 2, 3; Rev., s. 1159; C. S., s. 1156; 1921, c. 116, s. 1; 1923, c. 155; C. S., s. 1167(a); 1925, c. 118, ss. 2, 2a; c. 262, s. 1; 1939, c. 199; 1949, c. 929; G. S., ss. 55-61, 55-73; 1953, c. 822, ss. 1, 3; 1955, c. 1371, s. 1; 1969, c. 751, ss. 15-17.)

Editor's Note. — The 1969 amendment, effective Oct. 1, 1969, rewrote subsections (c) and (d) and inserted "(4) or" near the beginning of subsection (e).

As subsections (a) and (b) were not changed by the amendment, they are not set out.

§ 55-43. Subscriptions for shares.

(e) No preincorporation or post-incorporation subscription for shares shall contain provisions or be obtained upon oral or written representations that the payment of the shares subscribed is to be made out of subsequent earnings of the corporation or, except in a subscription by an employee, that the corporation (other than an investment company in cases within G.S. 55-52 (b) (5) or a building and loan association) will subsequently repurchase the shares, or that the subscribed shares are entitled to any advantage or perference over other shares of the same class or series; provided, that nothing herein shall invalidate the provisions of written agreements falling within G.S. 55-52 (b) (4). Any such provision or representation, or any oral condition purporting to qualify a written subscription, shall not be a defense against enforcement of the subscription or be grounds for rescission or for any other remedy against the corporation by the subscriber, but any promoter or agent of the corporation making or participating in making any such representation shall be liable to any subscriber for any loss resulting from reliance thereon, and any officer or director of a corporation who accepts a subscription which contains such provisions or which he knows was induced by such representations shall be similarly liable.

(1969, c. 751, s. 18.)

Editor's Note. — The 1969 amendment, effective Oct. 1, 1969, added the proviso at the end of the first sentence of subsection (e).

As the rest of the section was not changed by the amendment, only subsection (e) is set out.

§ 55-44.1. Rights of holders of debt securities.—In addition to any rights otherwise lawfully conferred, the charter of the corporation may confer upon the holders of any bonds, debentures or other debt obligations issued or to be issued by the corporation any one or more of the following powers and rights upon such terms and conditions as may be prescribed in the charter:

(1) The power to vote on any matter either in conjunction with or to the full or partial exclusion of its shareholders.

(2) The right to inspect the corporate books and records.

(3) Any other rights concerning the corporation which its shareholders have or may have.

Any such power or right shall not be diminished, as to bonds, debentures or other obligations then outstanding, except by an amendment of the charter approved by the vote or written consent of the holders of a majority in principal amount thereof or such larger percentage as may be specified in the charter. (1969, c. 751, s. 19.)

Editor's Note. — Session Laws 1969, c. 751, s. 47, makes this section effective Oct. 1, 1969.

§ 55-46. Consideration for shares.—(a) Shares of a corporation shall not be issued as fully or partly paid nor shall treasury shares be disposed of except for:

(1) Money or property, tangible or intangible, received by, or inuring to the benefit of, the corporation, or

(2) Labor or services actually rendered to the corporation or for its benefit in its organization or reorganization, or

(3) Shares, securities or other obligations of the corporation actually surrendered, cancelled or reduced, or

(4) Satisfaction of accrued dividends or dividend credits that have arisen with respect to preferred shares, or

(5) Amounts transferred from surplus to stated capital.

(1969, c. 751, s. 20.)

Editor's Note.—

The 1969 amendment substituted "received by, or inuring to the benefit of," for "actually received by" in subdivision (1) of subsection (a).

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

§ 55-49. Surplus, net profits and valuation of assets.

(d) Earned surplus is the portion of the surplus of a corporation equal to the balance of its net profits, income, gains and losses, including gains and losses realized from the disposition or destruction of fixed assets (but not including unrealized appreciation in the value of any assets), from the date of incorporation, after deducting subsequent distributions to shareholders and transfers to stated capital and to capital surplus to the extent that such distributions and transfers are made out of earned surplus, and after adding all transfers made from capital surplus as permitted by subsection (i) of this section, all computed in accordance with generally accepted principles of sound accounting practice applicable to the kind of business conducted by the corporation.

(h): Repealed by Session Laws 1969, c. 751, s. 45, effective October 1, 1969.

(1969, c. 751, ss. 21, 45.)

Editor's Note. — The 1969 amendment, effective Oct. 1, 1969, rewrote subsection (d) and repealed subsection (h), which related to the vote required for a transfer from earned surplus to capital surplus.

As the other subsections were not changed by the amendment, they are not set out.

§ 55-50. Dividends in cash or property.

(g) Concurrently with the payment of a dividend the corporation shall disclose to the shareholders receiving the same the source from which the dividend is paid if it is paid:

(1) Otherwise than out of earned surplus, or

(2) Out of earned surplus if within one year prior to the dividend payment a deficit in the earned surplus account has been reduced or eliminated as permitted by G.S. 55-49 (i), or

(3) Out of earned surplus or net profits computed without deduction for depletion of natural resources.

(i): Repealed by Session Laws 1969, c. 751, s. 45, effective October 1, 1969.

(1965, c. 726; 1969, c. 751, ss. 22, 45.)

Editor's Note.—

The 1969 amendment, effective Oct. 1, 1969, rewrote subdivision (2) of subsection (g) and repealed subsection (i), which had been amended in 1965 and related to payment of additional dividends upon demand of the stockholders in certain circumstances.

As the other subsections were not changed by the amendments, they are not set out.

For note on the 1965 amendments to this chapter, see 44 N.C.L. Rev. 1106 (1966).

Joinder of Suit for Failure to Declare Dividends with Cause of Action for Liquidation. — A stockholder in a corporation may sue the corporation, and join its directors as defendants, for failure to declare adequate dividends from the corporation's earnings; and may join therewith a second cause of action for liquidation and involuntary dissolution of the corporation based upon bad faith management in suppressing dividends and in deflating the value of the corporation's assets, thus precluding the plaintiff stockholder from obtaining either a fair dividend or a fair market for his stock. Dowd v. Charlotte Pipe & Foundry Co., 263 N.C. 101, 139 S.E.2d 10 (1964).

§ 55-52. Acquisition by a corporation of its own shares.

(b) Subject to the provisions of subsection (e) of this section, a corporation may, by action of its board of directors, purchase and pay for its shares, or redeem such shares if redeemable, regardless of any impairment of stated capital, in the following cases:

(1) To collect, settle, compromise or release in good faith a debt of or claim against any shareholder or subscriber of its shares;
(2) To eliminate fractional shares or to avoid their issuance;
(3) To satisfy claims of dissenting shareholders entitled to payment for their shares under the provisions of G.S. 55-113;
(4) To perform its obligation or exercise its right to purchase shares of an employee or former employee under a written agreement relating to the employment, or to perform its obligation or exercise its right under a written agreement to purchase shares of a deceased or disabled shareholder upon death or disability.
(5) If the corporation is organized to engage in the business of investing in securities and is engaged in no other business, to perform its agreement to repurchase its shares, at prices substantially equivalent to their proportionate interests in the assets of the corporation;
(6) Subject also to the provisions of subsection (f) of this section, to acquire for retirement, at prices not exceeding their redemption price, its shares that are subject to redemption.

(c) Subject to the provisions of subsections (e) and (f) of this section, a corporation may, by the action of its board of directors, purchase and pay for its shares, but only out of surplus and only in the following cases:

(1) If an offer is made to purchase pro rata from all its shareholders or all of a class of shareholders.
(2) From any shareholder shares which at the time are listed on an organized securities exchange.
(3) From any shareholder of any class, if the board of directors shall have obtained authorization so to purchase, within a period of one year preceding the purchase, by vote of a majority of the shares of the corporation entitled to vote after full disclosure to the holders of all such shares of the specific purpose of the proposed purchase, together with a statement of the number and class of shares proposed to be purchased. Such vote shall not be required for each specific purchase, provided the total number of shares purchased from any class shall not exceed the maximum number of shares of that class authorized to be purchased.
(4) From any shareholder in the exercise of the corporation's right to purchase the shares pursuant to restrictions upon the transfer thereof.
(5) In connection with stabilizing operations authorized by the Securities and Exchange Commission or other regulatory authority.
(6): Repealed by Session Laws 1969, c. 751, s. 45, effective October 1, 1969.

(d) A corporation may acquire shares issued by a parent corporation by purchase from such parent corporation, gift, bequest, merger, consolidation, distribution of the assets of the parent or another corporation or otherwise, but not by purchase of the outstanding shares of the parent.

(1967, c. 1163; 1969, c. 751, ss. 23-27, 45.)

Editor's Note.—

The 1969 amendment, effective Oct. 1, 1969, rewrote subdivision (4) of subsection (b), subdivisions (1), (2), and (3) of subsection (c), repealed former subdivision (6) of subsection (c), which had been previously amended in 1967 and which related to purchase of shareholder shares listed and traded on a securities exchange regulated or supervised by the United States government and shares in a corporation subject to the Securities Act of 1933. The amendment also rewrote subsection (d).

As the other subsections were not changed by the amendments, only subsections (b), (c) and (d) are set out.

ARTICLE 6.

Shareholders.

§ 55-53. Liability of shareholders arising from acquisition of shares.

(f) Every original holder of watered shares or of shares not fully paid as agreed shall continue liable thereon to the corporation notwithstanding any transfer of such shares. A transferee of such shares shall not be liable thereon if he acquired them in good faith without knowledge or notice that they were watered shares or shares not fully paid as agreed or if he acquired them from a transferor similarly free from liability. The burden of proof that the transferee did not so acquire the shares shall be upon the adverse party. No prior holder of such shares can improve his position by taking from a later holder who is free from liability.

(1969, c. 751, s. 28.)

Editor's Note.—

The 1969 amendment, effective Oct. 1, 1969, added the last sentence of subsection (f).

As the rest of the section was not changed by the amendment, only subsection (f) is set out.

§ 55-56. Preemptive rights.

(c) Unless otherwise stated in the charter, there shall be no preemptive rights to acquire:

(1) Shares issued within one year or to be issued pursuant to subscriptions accepted within one year, after the filing of the articles of incorporation, or

(2) Shares issued or to be issued for considerations, other than money, deemed by the board of directors in good faith to be advantageous to the corporation's business, or

(3) Shares released from preemptive rights by vote of two thirds of the shares entitled to such preemptive rights, or

(4) Shares sold or agreed to be sold to employees or options for shares granted to employees as provided in G.S. 55-45, or

(5) Shares issued or to be issued as a share dividend, or

(6) Shares issued or to be issued to satisfy conversion rights or option rights theretofore granted by the corporation, or

(7) Shares with respect to which the notice required by subsection (g) of this section has been given but which have not been purchased or subscribed within the prescribed time and which are thereafter sold or optioned to any other person or persons at a price no lower than and upon the other terms and conditions stated in such notice.

(g) The holders of shares entitled to preemptive rights under the charter or under this section shall be given written or printed notice briefly describing the shares with respect to which such rights exist and the period of time (not less than 15 days) within which and the terms and conditions, including the price, upon which such rights may be exercised. Such notice shall be delivered to each such holder, either personally or by mail, not less than 20 or more than 180 days prior to the expiration of the stated period within which such rights may be exercised. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the holder at his address as it appears on the record of shareholders of the corporation, with postage thereon prepaid. (1955, c. 1371, s. 1; 1969, c. 751, ss. 29-32.)

Editor's Note. — The 1969 amendment, effective Oct. 1, 1969, substituted "to acquire" for "with respect to" near the beginning of subsection (c), rewrote subdivision (1) of subsection (c), added subdivision (7) of subsection (c) and added subsection (g).

As the rest of the section was not changed by the amendment, only subsections (c) and (g) are set out.

§ 55-59. Recognition of acts of record owners of shares or other securities.

Editor's Note.—

For article on joint ownership of corporate securities in North Carolina, see 44 N.C.L. Rev. 290 (1966); 46 N.C.L. Rev. 520 (1968).

§ 55-63. Irregular meetings; action without meetings.

(c) Any action which, under any provision of this chapter, is required or permitted to be taken at a meeting of the shareholders, may be taken without a meeting if consent in writing, setting forth the action so taken, shall be signed by all of the persons who would be entitled to vote upon such action at a meeting and filed with the secretary of the corporation as part of the corporate records, whether done before or after the action so taken. Such consent shall have the same force and effect as a unanimous vote of shareholders, and may be stated as such in any certificate or document filed with the Secretary of State under this chapter. (1955, c. 1371, s. 1; 1969, c. 751, s. 33.)

Editor's Note. — The 1969 amendment, effective Oct. 1, 1969, substituted "is required or permitted to" for "may" near the beginning of the first sentence of subsection (c) and added, at the end of the same sentence, "whether done before or after the action so taken."

As subsections (a) and (b) were not changed by the amendment, they are not set out.

§ 55-67. Voting of shares.

(b) Except as otherwise provided in this subsection, shares of its own stock owned by a corporation, directly or indirectly, through a subsidiary corporation or otherwise, shall not be voted and shall not be counted in determining the total number of shares entitled to vote.

Notwithstanding any other provisions in this chapter, shares of its own stock held by a corporation or by its subsidiary corporation in a fiduciary capacity shall not be voted in the election of directors and shall not be counted in determining the total number of shares entitled to vote in the election of directors if such corporation is the sole fiduciary, unless the instrument or court order establishing the fiduciary relationship provides that such shares may be voted as directed by some person other than the fiduciary and unless such person actually directs how such shares shall be voted; but if such corporation is not the sole fiduciary, then such shares may be voted in the election of directors by the other fiduciary or fiduciaries in accordance with the provisions of G.S. 55-69, and such shares shall be counted in determining the total number of shares entitled to vote in the election of directors. In all other matters, shares of its own stock held directly or indirectly by a corporation or through a subsidiary thereof as sole fiduciary or as a cofiduciary may be voted by the registered owner or owners, unless the instrument creating the fiduciary relationship provides otherwise.

(c) Except where some inconsistent agreement exists for choosing directors, valid under the provisions of G.S. 55-73, directors shall be elected by a plurality of the votes cast and at each election for directors every shareholder entitled to vote at such election shall have the right to vote, in person or by proxy, the number of shares standing of record in his name for as many persons as there are directors to be elected and for whose election he has a right to vote, or to cumulate his votes by giving one candidate as many votes as the number of such directors multiplied by the number of his shares shall equal, or by distributing such votes on the same principle among any number of such candidates. This right of cumulative voting shall not be exercised unless some shareholder or proxy holder announces in open meeting, before the voting for directors starts, his intention so to vote cumulatively; and if such announcement is made, the chair shall declare that all shares entitled to vote have the right to vote cumulatively and shall announce the number of shares present in person and by proxy, and shall thereupon grant a recess of not less than one hour nor more than four hours, as he shall determine, or of such other period of time as is unanimously then agreed upon. Stockholders in any corporation now in existence under a charter which does not grant the right of cumulative voting may not exercise this right of cumulative voting when at the time of the election the stock transfer book of such corporation discloses, or it otherwise appears, that there is no stockholder who owns or controls more than one fourth of the voting stock of such corporation. Shares represented at a meeting by revocable proxy relating to that meeting or adjourned meetings thereof shall not be deemed shares "controlled" within the meaning of this subsection. (Rev., ss. 1183, 1184; 1907, c. 457, s. 1; 1909, c. 827, s. 1; C. S., s. 1173; 1945, c. 635; G. S., s. 55-110; 1951, c. 265, s. 2; 1953, c. 722; 1955, c. 1371, s. 1; 1959, c. 768; c. 1316, s. 23; 1963, c. 1065; 1969, c. 751, ss. 34, 35.)

Editor's Note.—

The 1969 amendment, effective Oct. 1, 1969, rewrote subsection (b) and inserted "directors shall be elected by a plurality of the votes cast and" near the beginning of subsection (c).

As subsection (a) was not changed by the amendment, it is not set out.

§ 55-68. Proxies.

Applied in Stein v. Capital Outdoor Adv., Inc., 273 N.C. 77, 159 S.E.2d 351 (1968).

§ 55-71. Proceeding to determine validity of election or appointment of directors or officers.

Applied in Stein v. Capital Outdoor Adv., Inc., 273 N.C. 77, 159 S.E.2d 351 (1968).

§ 55-72. Voting trust.

Cited in Stein v. Capital Outdoor Adv., Inc., 273 N.C. 77, 159 S.E.2d 351 (1968).

§ 55-73. Shareholders' agreements.

Agreement as to Voting Is Valid Unless There Is Fraud or Prejudice.—The Business Corporation Act clearly aligns North Carolina with the majority of jurisdictions which hold that a contract entered into between corporate stockholders by which they agree to vote their stock in a specified manner—including agreements for the election of directors and corporate officers—is not invalid, unless it is inspired by fraud or will prejudice the other stockholders. Wilson v. McClenny, 262 N.C. 121, 136 S.E.2d 569 (1964); Stein v. Capital Outdoor Adv., Inc., 273 N.C. 77, 159 S.E.2d 351 (1968).

Agreements for Future Management Must Be "Otherwise Lawful."—Both this section and § 55-24 require that contemplated agreements providing for the future management and control of a corporation be "otherwise lawful." Wilson v. McClenny, 262 N.C. 121, 136 S.E.2d 569 (1964).

When Such Agreements Held Invalid.—Agreements providing for the future management and control of a corporation which violate the express charter or statutory provision, contemplate an illegal object, involve any fraud, oppression or wrong against other stockholders or are made in consideration of a private benefit to the promisor, will be declared invalid. Wilson v. McClenny, 262 N.C. 121, 136 S.E.2d 569 (1964).

The promoters of a corporation occupy a relation of trust and confidence towards the corporation which they are calling into existence as well as to each other, and the law requires of them the same good faith it exacts from directors and other fiduciaries. Wilson v. McClenny, 262 N.C. 121, 136 S.E.2d 569 (1964).

ARTICLE 7.

Uniform Stock Transfer Act.

§§ 55-75 to 55-98: Repealed by Session Laws 1965, c. 700, s. 2, effective at midnight June 30, 1967.

Cross Reference.—For provisions of the Uniform Commercial Code as to investment securities, see §§ 25-8-101 to 25-8-406.

ARTICLE 8.

Fundamental Changes.

§ 55-101. Class voting and objecting shareholders' rights on amendments.—(a) The holders of outstanding shares of a class shall be entitled as a class to vote, whether or not otherwise entitled to vote by the provisions of the charter, upon a proposed amendment which would:

(1) Cancel or otherwise affect their rights to accrued dividends or dividend credits as defined in this chapter,
(2) Reduce the dividend preference thereof,
(3) Make noncumulative, in whole or in part, the dividends thereof which had theretofore been cumulative,
(4) Reduce the redemption price thereof or make them subject to redemption when they are not otherwise redeemable,
(5) Reduce any preferential amount payable thereon upon voluntary or involuntary liquidation,
(6) Eliminate, diminish, or alter adversely conversion rights pertaining thereto,
(7) Eliminate, diminish or alter adversely voting rights pertaining thereto, either directly or by increasing the relative voting rights per share of the shares of another class,
(8) Diminish or alter adversely any options or rights of the holders thereof to purchase other shares of the corporation,
(9) Change adversely any sinking fund provision relating thereto,
(10) Rearrange the preferences of such outstanding shares so as to make them subject to the preferences of other than authorized shares, issued or unissued, as to distribution by way of dividends or otherwise,
(11) Increase the rights and preferences of any other class of shares having equal or prior or superior rights or preferences,
(12) Authorize a new class of shares having prior or superior rights or preferences or confer voting rights on holders of debt securities as permitted by the provisions of G.S. 55-44.1, or
(13) Change the corporation into a nonprofit corporation or a cooperative organization.

(1969, c. 751, s. 36.)

Editor's Note.—

The 1969 amendment, effective Oct. 1, 1969, added "or confer voting rights on holders of debt securities as permitted by the provisions of G.S. 55-44.1, or" at the end of subdivision (12) of subsection (a).

As subsection (b) was not changed by the amendment, it is not set out.

§ 55-106. Procedure for merger. — (a) One or more domestic corporations may merge into another corporation pursuant to a plan of merger approved in the manner provided in this chapter.

(b) The board of directors of each corporation shall, by resolution adopted by each such board, approve a plan of merger setting forth:

(1) The names of the corporations proposing to merge, and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation.
(2) The name which the surviving corporation is to have, which name may be that of any of the corporations involved in the merger or any other available name permitted by this chapter.
(3) The terms and conditions of the proposed merger.
(4) The manner and basis of converting the shares of each merging corporation into shares or other securities or obligations of the surviving corporation, and if any shares of any merging corporation are not

to be converted solely into shares or other securities or obligations of the surviving corporation, the amount of cash or shares or other securities or obligations of any other corporation which the holders of such shares are entitled to receive in exchange for such shares or upon their conversion and the surrender of the certificates evidencing such shares, which cash or shares or other securities or obligations of any other corporation may be in addition to or in lieu of the shares or securities or obligations of the surviving corporation; or, if any merging corporation is the wholly owned subsidiary of the surviving corporation and no cash or shares or other securities or obligations will be distributed or issued upon conversion or cancellation of the shares of any such merging corporation, a statement to that effect.

(5) A statement of any changes in the charter of the surviving corporation to be effected by such merger.

(6) Such other provisions not inconsistent with law as are deemed necessary or desirable. (1925, c. 77, s. 1; 1939, c. 5; 1943, c. 270; G. S., s. 55-165; 1955, c. 1371, s. 1; 1969, c. 751, s. 37.)

Editor's Note.—

The 1969 amendment added all of subdivision (4) of subsection (b) that follows "surviving corporation" where that phrase first appears near the beginning of the subdivision.

§ **55-107. Procedure for consolidation.**—(a) Any two or more domestic corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in this chapter.

(b) The board of directors of each corporation shall, by resolution adopted by each such board, approve a plan of consolidation setting forth:

(1) The names of the corporations proposing to consolidate, and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation. The name of the new corporation may be that of any of the corporations involved in the consolidation or any other available name permitted by this chapter.

(2) The terms and conditions of the proposed consolidation.

(3) The manner and basis of converting the shares of each corporation into shares or other securities or obligations of the new corporation, and, if any shares of any consolidating corporation are not to be converted solely into shares or other securities or obligations of the surviving corporation, the amount of cash or shares or other securities or obligations of any other corporation which the holders of such shares are entitled to receive in exchange for such shares or upon their conversion and the surrender of the certificates evidencing such shares, which cash or shares or other securities or obligations of any other corporation may be in addition to or in lieu of the shares or securities or obligations of the new corporation.

(4) With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this chapter, except the names and addresses of the incorporators.

(5) Such other provisions not inconsistent with law as are deemed necessary or desirable. (1925, c. 77, s. 1; 1939, c. 5; 1943, c. 270; G. S., s. 55-165; 1955, c. 1371, s. 1; 1969, c. 751, s. 38.)

Editor's Note. — The 1969 amendment added all of subdivision (3) of subsection (b) that follows "the new corporation" near the beginning of the subdivision.

§ **55-109. Articles of merger or of consolidation.**—(a) After the approval by the shareholders as required by G.S. 55-108, articles of merger or of consolidation shall be executed by each corporation and be filed as provided in G.S. 55-4, except that a copy thereof certified by the Secretary of State shall also be recorded in the office of the register of deeds of each county wherein the constituent corporations have their registered offices.

(1967, c. 823, s. 18.)

Cross Reference.—See Editor's note to § 53-5.

Editor's Note. — The 1967 amendment, effective Jan. 1, 1968, substituted "register of deeds" for "clerk of the superior court" in subsection (a).

As subsections (b) and (c) were not changed by the amendment, they are not set out.

§ 55-110. Effect of merger or consolidation.

(b) Such surviving or new corporation shall thereupon and thereafter, to the extent consistent with its charter as established or changed by the merger or consolidation, possess all the rights, privileges, immunities, and franchises, as well of a public as of a private nature, of each of the merging or consolidating corporations; and all property, real, personal and mixed, and all debts due on whatever account, and all other choses in action, and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed; and the title to any real estate, or any interest therein, vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation. The provisions of this subsection are subject to the provisions of G.S. 47-18.1, with regard to the registration of certificates of merger or consolidation if the title to real property is affected.

(1967, c. 950, s. 1.)

Editor's Note. — The 1967 amendment, effective Oct. 1, 1967, added the last sentence in subsection (b).

As only subsection (b) was affected by the amendment, the rest of the section is not set out.

§ 55-112. Sale, lease, exchange and mortgage of assets.

Editor's Note.—For comment on the disposition of corporate assets, see 43 N.C.L. Rev. 957 (1965).

§ 55-113. Rights of objecting shareholders upon fundamental changes and certain exchanges of shares.

(j) A shareholder may not exercise his rights under this section as to less than all of the shares owned beneficially by him and with respect to which such rights exist. A nominee or fiduciary may not dissent on behalf of any beneficial owner as to less than all of the shares of such owner with respect to which the right of dissent exists. (1925, c. 77, s. 1; 1943, c. 270; G. S., s. 55-167; 1955, c. 1371, s. 1; 1969, c. 751, s. 39.)

Editor's Note. — The 1969 amendment, effective Oct. 1, 1969, added subsection (j).

As the rest of the section was not changed by the amendment, only subsection (j) is set out.

ARTICLE 9.

Dissolution and Liquidation.

§ 55-125. Power of courts to liquidate and decree involuntary dissolution.

Showing Required under Subsection (a) (4).—When the power of the court in the exercise of its equitable jurisdiction is invoked to liquidate and decree involuntary dissolution under subsection (a) (4), there must be a showing that the liquidation is reasonably necessary for the protection of the rights or interests of the complaining shareholder. Dowd v. Charlotte Pipe & Foundry Co., 263 N.C. 101, 139 S.E.2d 10 (1964).

Joinder of Suit for Failure to Declare

Dividends with Cause of Action for Liquidation.—A stockholder in a corporation may sue the corporation, and join its directors as defendants, for failure to declare adequate dividends from the corporation's earnings; and may join therewith a second cause of action for liquidation and involuntary dissolution of the corporation based upon bad faith management in suppressing dividends and in deflating the value of the corporation's assets, thus precluding the plaintiff stockholder from obtaining either a fair dividend or a fair market for his stock. Dowd v. Charlotte Pipe & Foundry Co., 263 N.C. 101, 139 S.E.2d 10 (1964).

Directors are Proper Parties to Shareholder's Suit.—Directors are proper parties to a suit to dissolve the corporation upon the complaint of one shareholder, even though no relief is sought against them personally. Dowd v. Charlotte Pipe & Foundry Co., 263 N.C. 101, 139 S.E.2d 10 (1964).

They May Be Joined or Become Parties on Own Application.—The implication in this section is that directors and other interested shareholders may be made, or, on their own application, may become parties to a complaining shareholder's action to liquidate and dissolve the corporation. Certainly, the directors are not improper parties. Dowd v. Charlotte Pipe & Foundry Co., 263 N.C. 101, 139 S.E.2d 10 (1964).

§ 55-127. Procedure in liquidation of corporation by court.

Applied in Dowd v. Charlotte Pipe & Foundry Co., 263 N.C. 101, 139 S.E.2d 10 (1964).

§ 55-129. Duties of officials as to decrees and orders concerning dissolution.—A court decree effecting or canceling a dissolution of a corporation or a court order declaring liquidation completed shall contain a direction to the clerk of that court promptly to file one certified copy of such decree or order with the Secretary of State and also to file a certified copy thereof with the register of deeds of the county wherein the corporation has its registered office. The fees for the preparation, certificates, and filing of such decree or order shall be taxed as a part of the costs in the action. The register of deeds shall record and index the order or decree in the Record of Incorporations; promptly after the recordation, the register shall note the fact of recordation on the said copy and return it to the corporation or its representative. If the corporation or its representative cannot be located, the register may destroy the copy. (1955, c. 1371, s. 1; 1967, c. 823, s. 19; 1969, c. 965, s. 1.)

Cross Reference.—See Editor's note to § 53-5.

Editor's Note. — The 1967 amendment, effective Jan. 1, 1968, substituted "register of deeds" for "clerk of the superior court" in the first sentence and deleted "unless the decree or order was entered in that court" at the end of such sentence.

The 1969 amendment, effective July 1, 1969, added the third and fourth sentences.

§ 55-130. Disposition of amounts due to unavailable shareholders and creditors.

Editor's Note.—For comment on escheat of intangible property, see 2 Wake Forest Intra. L. Rev. 100 (1966).

ARTICLE 10.

Foreign Corporations.

§ 55-131. Right to transact business.

Editor's Note.—

For comment on the duty to register the transfer of investment securities, see 44 N.C.L. Rev. 854 (1966).

For article on "Foreign Corporation Laws: The Loss of Reason," see 47 N.C.L. Rev. 1 (1968).

Substituted Service Proper against Domesticated Foreign Corporation Wherever Cause of Action Arose.—A foreign corporation which has complied with this article and has been duly authorized to do business in this State, may be sued in this State by substituted service on the

Secretary of State on a cause of action arising either inside or outside the State. Atlantic Coast Line R.R. v. J. B. Hunt & Sons, 260 N.C. 717, 133 S.E.2d 644 (1963).

Mere soliciting or procuring orders through employees or agents, where such orders require acceptance without this State before becoming binding contracts, does not constitute "transacting business" in this State. Schnur & Cohan, Inc. v. McDonald, 220 F. Supp. 9 (M.D.N.C. 1963), appeal dismissed, 328 F.2d 103 (4th Cir. 1964).

Stated in Westarc Leasing Corp. v. Capital Sign Serv., Inc., 268 N.C. 601, 151 S.E.2d 204 (1966).

§ 55-132. Powers of foreign corporation.

(b) A foreign corporation, however, is not eligible or entitled to qualify in this State as executor, administrator, or guardian, or as trustee under the will of any person domiciled in this State at the time of his death, except that a foreign corporation chartered under the banking laws of Georgia, South Carolina, Tennessee or Virginia or as a National Banking Association in any said states may act as testamentary trustee, or executor in this State if:

(1) It has a bona fide capital of at least two hundred and fifty thousand dollars ($250,000.00) actually paid in;

(2) It is authorized to act in such fiduciary capacity in the state in which it is incorporated or if such foreign corporation be a national banking association in the state in which it has its principal place of business; and

(3) Any bank or other corporation organized under the laws of this State or a national banking association having its principal place of business in this State is permitted by law to act in such fiduciary capacity in the state in which such foreign corporation seeking to act in this State is organized or in which it has its principal place of business if it is a national banking association without further showing or qualification other than that it is authorized to act in such fiduciary capacity in this State and upon compliance with the laws of such other state, if any, concerning service of process on nonresident fiduciaries.

Unless assets of the estate are to be removed from within the State of North Carolina, such foreign corporations seeking to act as testamentary trustee, or exectuor in this State, upon qualifying to act in such fiduciary capacity, shall not be required by law to give bond except as required of a resident corporate fiduciary in like circumstances. No officer, employee or agent of any such foreign corporation shall be eligible or entitled to serve as testamentary trustee, or executor in this State whether such officer, employee, or agent is a resident or a nonresident of this State if such officer, employee, or agent is acting as testamentary trustee, or executor on behalf of any such foreign corporation except when such foreign corporation itself shall be eligible to so serve.

A foreign corporation qualifying as testamentary trustee or executor under the provisions of this section shall appoint a process agent in the same manner as now provided under General Statute 28-186 in the case of nonresident executors. (1901, c. 2, s. 93; Rev., s. 1193; 1915, c. 196, s. 1; C. S., s. 1180; G. S., s. 55-117; 1955, c. 1371, s. 1; 1969, c. 839.)

Editor's Note.—
The 1969 amendment added all of subsection (b) following the word "death" near the beginning of the subsection.

As subsection (a) was not changed by the amendment, it is not set out.

§ 55-137. Corporate name of foreign corporation.

(c) The corporate name shall not be the same as, or deceptively similar to, the name of any domestic corporation, whether for profit or not for profit, or any foreign corporation, whether for profit or not for profit, authorized to transact business in this State, or a name the exclusive right to which is, at the time, reserved or registered in the manner prescribed in G.S. 55-12, except that the Secretary of State may in his discretion issue a certificate of authority to a foreign corporation which has a corporate name the same as or similar to that of some other domestic corporation or foreign corporation authorized to transact business in this State:

(1) If the Secretary of State finds, upon proof by affidavit or otherwise, that such corporations are not engaged in the same or similar businesses and that the public is not likely to be confused or deceived, and if, upon requirement by the Secretary of State in his discretion, such foreign corporation agrees in its application for certificate of authority to add to its corporate name in this State words indicating the state or country under the laws of which it is incorporated; or

(2) If the foreign corporation agrees in its application for certificate of authority to do business in this State only an assumed name that would be available for use in this State, in which event such corporation shall thereafter comply with all of the provisions of law, including the provisions of G.S. 66-68 through 66-71, relating to doing business under an assumed name and such assumed name shall be deemed to be the name of such foreign corporation in this State and shall be entitled to the same protection under this chapter as if it were the name of such foreign corporation.

(1969, c. 751, s. 40.)

Editor's Note.—
The 1969 amendment, effective Oct. 1, 1969, rewrote subsection (c).

As the rest of the section was not changed by the amendment, only subsection (c) is set out.

§ **55-138. Application for certificate of authority.**—(a) A foreign corporation, in order to procure a certificate of authority to transact business in this State, shall make application therefor to the Secretary of State, which application shall set forth:

(1) The name of the corporation and the state or country under the laws of which it is incorporated.

(2) If the name of the corporation does not contain the word "corporation," "incorporated," "limited," or "company," or does not contain an abbreviation of one of such words, then the name of the corporation with the word or abbreviation which it elects to add thereto for use in this State; or if the corporation agrees under G.S. 55-137 (c) to add to its corporate name in this State words indicating its jurisdiction of incorporation or agrees to do business under an assumed name, then the name of the corporation with the words so added or the assumed name which name must contain the words or abbreviations required by this subdivision.

(3) The date of incorporation and the period of duration of the corporation.

(4) The address of the principal office of the corporation in the state or country under the laws of which it is incorporated.

(5) The address, including county and city or town, and street and number, if any, of the proposed registered office of the corporation in this State, and the name of its proposed registered agent in this State at such address.

(6) The purpose or purposes of the corporation which it proposes to pursue in the transaction of business in this State.

(7) The names and respective addresses of the directors and officers of the corporation.

(8) A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.

(9) A statement of the aggregate number of issued shares itemized by classes, par value of shares, shares without par value, and series, if any, within a class.

(10) A statement that, in consideration of the issuance of a certificate of authority to transact business in this State, the corporation appoints the Secretary of State of North Carolina as its agent to receive service of process, notice, or demand whenever the corporation fails to appoint or maintain a registered agent in this State, or whenever any such registered agent cannot with reasonable diligence be found at the registered office.

(b) Such application shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary, and verified by one of its officers signing such application. (1955, c. 1371, s. 1; 1957, c. 979, s. 8; 1969, c. 751, s. 41.)

Editor's Note.—

The 1969 amendment, effective Oct. 1, 1969, added that part of subdivision (2) of subsection (a) that follows the semicolon.

Section Inapplicable Where Foreign Corporation Has Complied with Requirements for Domestication.—Where a foreign corporation has complied with the statutory requirements for domestication it is not required to file with the Secretary of State the certificate prescribed by this section, nor is it required to notify the Secretary of State of its principal office in this State. Aetna Cas. & Sur. Co. v. Petroleum Transit Co., 266 N.C. 756, 147 S.E.2d 229 (1966).

§ 55-142. Change of registered office or registered agent of foreign corporation.

(d) In lieu of the procedure set out in subsection (a) above, the location of the registered office of a foreign corporation may be changed from one address to another in the same city or town in this State upon the change of the business office of its registered agent, upon the making and executing by the registered agent of such corporation of a certificate, duly acknowledged before an officer authorized by the laws of this State to take acknowledgments of deeds, setting forth the name of each corporation represented by such registered agent and the address at which such registered agent has maintained a registered office for each of such corporations and further certifying to the new address to which such registered office will be transferred on a given day and at which new address such registered agent will thereafter maintain the registered office of each of the corporations recited in the certificate. The fee to be charged by the Secretary of State for the filing of such certificate shall be a fee of three dollars ($3.00) for each corporation listed in said certificate. (1955, c. 1371, s. 1; 1957, c. 979, ss. 9, 10; 1965, c. 298, s. 2.)

Editor's Note.—

The 1965 amendment added subsection (d).

As only subsection (d) was affected by the amendment, the rest of the section is not set out.

For note on the 1965 amendments to this chapter, see 44 N.C.L. Rev. 1106 (1966).

§ 55-143. Suits against foreign corporations authorized to transact business in this State.

Editor's Note.—

Subsection (c) of this section changed the rule laid down in Central Motor Lines, Inc. v. Brooks Transp. Co., 225 N.C. 733, 36 S.E.2d 271, 162 A.L.R. 1419 (1945); Hamilton v. Atlantic Greyhound Corp., 220 N.C. 815, 18 S.E.2d 367 (1942); and King v. Robinson Transfer Motor Lines, Inc., 219 N.C. 223, 13 S.E.2d 233 (1941). Atlantic Coast Line R.R. v. J. B. Hunt & Sons, 260 N.C. 717, 133 S.E.2d 644 (1963).

Domesticated Foreign Corporation May Be Sued Like Domestic Corporation.—The policy of this section is to treat the foreign corporation which is authorized to transact business in this State just as a domestic corporation is treated, insofar as suability is concerned. Atlantic Coast Line R.R. v.

J. B. Hunt & Sons, 260 N.C. 717, 133 S.E.2d 644 (1963).

Secretary of State Becomes Process Agent if There Is No Registered Agent.—If a foreign corporation fails to appoint or maintain a registered agent in this State, or whenever such agent cannot be found, then the Secretary of State becomes an agent upon whom process may be served. Atlantic Coast Line R.R. v. J.B. Hunt & Sons, 260 N.C. 717, 133 S.E.2d 644 (1963).

Express consent to substituted service is required at the time the foreign corporation domesticates, and such express consent has been held to cure the constitutional difficulty presented by transitory causes of action. Atlantic Coast Line R.R. v. J. B. Hunt & Sons, 260 N.C. 717, 133 S.E.2d 644 (1963).

Thus, Domesticated Foreign Corporation May Be Sued by Substituted Service on Transitory Cause of Action.—A foreign corporation which has complied with this article and has been duly authorized to do business in this State, may be sued in this State by substituted service on the Secretary of State on a cause of action arising either inside or outside the State. Atlantic Coast Line R.R. v. J. B. Hunt & Sons, 260 N.C. 717, 133 S.E.2d 644 (1963).

Whether or Not Suit Relates to Business Transacted in State.—This section sanctions a suit in this State against a foreign corporation authorized to transact business in this State by service on the registered agent, or on the Secretary of State if there is no such agent, whether or not it relates to business transacted in this State. Atlantic Coast Line R.R. v. J. B. Hunt & Sons, 260 N.C. 717, 133 S.E.2d 644 (1963).

But Section Is Inapplicable to Undomesticated Foreign Corporations. — This section applies to service of process on a foreign corporation only in those instances in which the corporation has domesticated here, regardless of whether or not the cause of action arose in this State and regardless of whether the action relates to business transacted in this State, and this section has no application to a foreign corporation which has not domesticated here. Atlantic Coast Line R.R. v. J. B. Hunt & Sons, 260 N.C. 717, 133 S.E.2d 644 (1963).

Substituted Service in Action against Such Corporation for Tort Committed outside State Is Unauthorized.—No statute in North Carolina authorizes service upon the Secretary of State in an action against an undomesticated foreign corporation doing business in this State or a tort committed outside this State. Atlantic Coast Line R.R. v. J. B. Hunt & Sons, 260 N.C. 717, 133 S.E.2d 644 (1963).

Cited in Abney Mills v. Tri-State Motor Transit Co., 268 N.C. 313, 150 S.E.2d 585 (1966).

§ 55-144. Suits against foreign corporations transacting business in the State without authorization.

Editor's Note.—

For case law survey on conflict of laws, see 43 N.C.L. Rev. 895 (1965).

For case law survey on trial practice, see 43 N.C.L. Rev. 938 (1965).

For note on jurisdiction over foreign corporations not qualified to transact business in North Carolina, see 44 N.C.L. Rev. 449 (1966).

Section Preserves Rule as to Substituted Service on Undomesticated Foreign Corporations.—The rule as to substituted service on foreign corporations which transact business in this State without domesticating is preserved by this section. Atlantic Coast Line R.R. v. J. B. Hunt & Sons. 260 N.C. 717, 133 S.E.2d 644 (1963).

Such Corporation May Not Be Sued on Transitory Foreign Cause of Action.—A foreign corporation which has done business in the State without complying with the law may not be brought into court on a transitory foreign cause of action. Atlantic Coast Line R.R. v. J. B. Hunt & Sons, 260 N.C. 717, 133 S.E.2d 644 (1963).

This Section Gives No Jurisdiction of Such Causes of Action.—This section provides no jurisdiction in this State for foreign transitory causes of action Atlantic Coast Line R.R. v. J. B. Hunt & Sons, 260 N.C. 717, 133 S.E.2d 644 (1963).

The provisions of this section are not available for transitory foreign causes of action. Abney Mills v. Tri-State Motor Transit Co., 265 N.C. 61, 143 S.E.2d 235 (1965).

Thus, There Cannot Be Substituted Service on Such Corporation in Action on Foreign Tort.—If a foreign corporation, not domesticated in North Carolina, were transacting business in this State, it could not be brought into court in this State under this section by service of process upon the Secretary of State in an action based on a tort occurring in Virginia. Atlantic Coast Line R.R. v. J. B. Hunt & Sons, 260 N.C. 717, 133 S.E.2d 644 (1963).

No statute in this State authorizes service upon the Secretary of State in an action against an undomesticated foreign corporation doing business in this State for a tort committed outside this State. Atlantic Coast Line R.R. v. J. B. Hunt & Sons, 260 N.C. 717, 133 S.E.2d 644 (1963).

While defendant was doing business in this State during the time its agent was here managing a domestic carrier, the cause of action did not arise out of business so transacted in this State, and therefore service of process under this section by service on the Secretary of State was a nullity. Abney Mills v. Tri-State Motor Transit Co., 268 N.C. 313, 150 S.E.2d 585 (1966).

Cause of Action Must Arise in This State for Substituted Service.—An action based upon substituted service on the Secretary of State may be maintained against an undomesticated foreign corporation only on causes arising within the State. Atlantic Coast Line R.R. v. J. B. Hunt & Sons, 260 N.C. 717, 133 S.E.2d 644 (1963).

But Service Is Not Authorized in Every Case Where Cause of Action Arose in This State.—This section does not authorize service of summons upon the Secretary of State in all cases where the cause of action arose in this State. Abney Mills v. Tri-State Motor Transit Co., 268 N.C. 313, 150 S.E.2d 585 (1966).

And This Section Limits Such Service to Causes of Action from Business Transacted in State. — This section expressly limits substituted service upon the Secretary of State where the foreign corporation has not domesticated, to suits upon a cause of action arising out of business transacted in this State. Atlantic Coast Line R.R. v. J. B. Hunt & Sons, 260 N.C. 717, 133 S.E.2d 644 (1963).

This section applies only when the cause of action against a foreign corporation arises out of business conducted by it in this State, and therefore, when a transitory cause of action arises in another state, this section can have no application. Atlantic Coast Line R.R. v. J. B. Hunt & Sons, 260 N.C. 717, 133 S.E.2d 644 (1963).

For the service of process upon the Secretary of State to be valid and binding upon defendant, two things must exist, by reason of the express provisions of this section: (1) Defendant must have transacted business in this State, and (2) the cause of action here must have arisen out of such business. Abney Mills v. Tri-State Motor Transit Co., 265 N.C. 61, 143 S.E.2d 235 (1965).

There are three conditions precedent to valid service under this section, namely: (1) The foreign corporation must transact business in this State; (2) the foreign corporation must transact business in this State without first procuring a certificate of authority from the Secretary of State; and (3) there must be a cause of action arising out of such business. Epps v. Golden, 295 F. Supp. 520 (W.D.N.C. 1968).

This section requires more "contacts," etc.—

This section concerns "foreign corporations transacting business in the State" and, therefore, necessarily seems to be more restrictive in its application than § 55-145, the latter section dealing with "foreign corporations not transacting business" in the State. The foreign corporation must have more contacts with the forum state in order to come within the statutory limits of this section. Bowman v. Curt G. Joa, Inc., 361 F.2d 706 (4th Cir. 1966); Long v. Burdette Mfg. Co., 294 F. Supp. 784 (W.D.N.C. 1968); Epps v. Golden, 295 F. Supp. 520 (W.D.N.C. 1968).

More contacts with the forum State are required in order to come within the limits of this section than are required under § 55-145. Epps. v. Golden, 295 F. Supp. 520 (W.D.N.C. 1968).

Effect of Change from, etc.—

In accord with original. See Abney Mills v. Tri-State Motor Transit Co., 265 N.C. 61, 143 S.E.2d 235 (1965).

The present North Carolina statute was enacted after the landmark decision in International Shoe Co. v. Washington, 326 U.S. 310, 66 Sup. Ct. 154, 90 L. Ed. 95 (1945), wherein the old jurisdictional tests of "consent," "presence," and "doing business" were discarded and a qualitative test of "minimum contacts" was established for determining the constitutional limits on a state court's jurisdictional reach. North Carolina's previous statute had used the phrase "doing business," and in July 1957 this was replaced with the present § 55-144 and its "transacting business" phraseology. In Abney Mills v. Tri-State Motor Transit Co., 265 N.C. 61, 143 S.E.2d 235 (1965), this present language was held to be more liberal than the previous "doing business." Bowman v. Curt G. Joa, Inc., 361 F.2d 706 (4th Cir. 1966).

The meaning of the expression "doing business in this State," as used in former § 55-38, is also accurate as to the meaning of "shall transact business in this State," as used in this section. Abney Mills v. Tri-State Motor Transit Co., 265 N.C. 61, 143 S.E.2d 235 (1965).

What Constitutes Doing Business.—

In accord with 1st paragraph in original. See Abney Mills v. Tri-State Motor Transit Co., 265 N.C. 61, 143 S.E.2d 235 (1965).

Doing business in this State means

doing some of the things or exercising some of the functions in this State for which the corporation was created. Spartan Equip. Co. v. Air Placement Equip. Co., 263 N.C. 549, 140 S.E.2d 3 (1965); Abney Mills v. Tri-State Motor Transit Co., 265 N.C. 61, 143 S.E.2d 235 (1965).

The business done by the corporation in this State must be of such nature and character as to warrant the inference that the corporation has subjected itself to the local jurisdiction and is, by its duly authorized officers and agents, present within the State. Spartan Equip. Co. v. Air Placement Equip. Co., 263 N.C. 549, 140 S.E.2d 3 (1965); Abney Mills v. Tri-State Motor Transit Co., 265 N.C. 61, 143 S.E.2d 235 (1965).

Transacting business within the State is defined as the transaction within the State of some substantial part of a party's ordinary business, which must be continuous in the sense that it is distinguished from merely casual or occasional transactions, and must be of such a character as will give rise to some form of legal obligations. Abney Mills v. Tri-State Motor Transit Co., 265 N.C. 61, 143 S.E.2d 235 (1965).

In Abney Mills v. Tri-State Motor Transit Co., 265 N.C. 61, 143 S.E.2d 235 (1965), "transacting business" was construed as activities in North Carolina which are "'substantial,' 'continuous and systematic,' and 'regular,' as distinquished from 'casual,' 'single' or 'isolated acts.'" Bowman v. Curt G. Joa, Inc., 361 F.2d 706 (4th Cir. 1966).

Presence in the State has never been doubted when the activities of the corporation there have not only been continuous and systematic, but also give rise to the liabilities sued on, even though no consent to be sued or authorization to an agent to accept service of process has been given. Abney Mills v. Tri-State Motor Transit Co., 265 N.C. 61, 143 S.E.2d 235 (1965).

Same—Invocation of Benefits of Law of Forum.—A relevant inquiry is whether defendant engaged in some act or conduct by which it may be said to have invoked the benefits and protections of the law of the forum. United States v. Atlantic Contractors, Inc., 231 F. Supp. 356 (E.D.N.C. 1964).

Same—Continuity of Conduct.—

Where a foreign corporation has been continuously and systematically for several years doing business in North Carolina and exercising in this State some of the functions for which it was created, and has such substantial contacts within the State that the maintenance of a suit in personam does not offend traditional notions of fair play and substantial justice, it is proper to refuse to quash service of process. Spartan Equip. Co. v. Air Placement Equip. Co., 263 N.C. 549, 140 S.E.2d 3 (1965).

Same — Employment of Soliciting Agent.—

While the salesmen did some promotional work, and attempted to create good will for their company, and perhaps on occasions rendered engineering service or advice to customers, their principal and significant duties consisted of soliciting orders for acceptance at the home office and this did not constitute transacting business. Schnur & Cohan, Inc. v. McDonald, 220 F. Supp. 9 (M.D.N.C. 1963), appeal dismissed, 328 F.2d 103 (4th Cir. 1964).

Same—Single-Item Sales Contract Following Engineering Consultant Services.—The facts amount to two intermittent acts: (1) The contract to supply engineering consultant services to a furniture manufacturer. The work was not shown to have been performed within the State of North Carolina; performance in that contract was completed at least a year prior to the events involved in the case at bar; and the action here in suit did not arise out of that consultant contract. (2) The negotiation of the single-item sales contract involved in the case at bar. These activities fall outside this section. Bowman v. Curt G. Joa, Inc., 361 F.2d 706 (4th Cir. 1966).

Same—Ownership or Control of Subsidiary Doing Business in State. — Generally, it has been held or recognized that the mere ownership or control by a foreign corporation through a majority stock ownership of the stock of another corporation which is doing business within a state, either resident or domesticated, does not, in and of itself, constitute doing business within the state by the foreign corporation for the service of process so as to subject it to the state's jurisdiction, where the foreign corporation is not created for the very purpose of holding such stock and the two corporations remain distinct entities. Abney Mills v. Tri-State Motor Transit Co., 265 N.C. 61, 143 S.E.2d 235 (1965).

Same—Transacting Business of Domestic Subsidiary in State.—Where a foreign corporation acquires and holds controlling stock interest in a domestic corporation, and comes into the state where the domestic corporation is created and doing business, and there itself by its officer or officers transacts business of the domestic corporation and manages and controls its internal affairs, then such foreign corporation is doing business within the domestic state and is subject to the jurisdiction of its courts. Abney Mills v. Tri-State Motor Transit Co., 265 N.C. 61, 143 S.E.2d 235 (1965).

Same—Question of Fact.—

It is to be distinctly understood that no all-embracing rule as to what is the meaning of "shall transact business in this State" has been formulated. This question must be determined largely according to the facts of each individual case rather than by the application of fixed, definite, and precise rules. Abney Mills v. Tri-State Motor Transit Co., 265 N.C. 61, 143 S.E.2d 235 (1965).

The validity of service of summons under this section, as well as the satisfaction of due process, must be largely determined by a factual evaluation of the nature and extent of the business of the defendant. Schnur & Cohan, Inc. v. McDonald, 220 F. Supp. 9 (M.D.N.C. 1963), appeal dismissed, 328 F.2d 103 (4th Cir. 1964).

Whether the type of activity conducted within the State is adequate to satisfy the "transacting business" requirements depends upon the facts of the particular case. United States v. Atlantic Contractors, Inc., 231 F. Supp. 356 (E.D.N.C. 1964).

The question of whether a company is transacting business within the State cannot be answered by applying a mechanical formula or rule of thumb, but only by ascertaining what is fair and reasonable and just in the circumstances. United States v. Atlantic Contractors, Inc., 231 F. Supp. 356 (E.D.N.C. 1964).

Findings of fact should be made so that it could be determined whether or not activities by the defendant in this State were "substantial," "continuous and systematic," and "regular," as distinguished from "casual," "single" or "isolated acts," and that defendant by such activities was transacting business in this State under the relevant rules of law and within the intent and meaning of this section. Abney Mills v. Tri-State Motor Transit Co., 265 N.C. 61, 143 S.E.2d 235 (1965).

The federal court in a diversity action is bound by the jurisdictional limits placed on the North Carolina courts by the State legislature. Bowman v. Curt G. Joa, Inc., 361 F.2d 706 (4th Cir. 1966).

§ 55-145. Jurisdiction over foreign corporations not transacting business in this State.

Editor's Note.—

For case law survey on conflict of laws, see 43 N.C.L. Rev. 895 (1965).

For note on jurisdiction over foreign corporations not qualified to transact business in North Carolina, see 44 N.C.L. Rev. 449 (1966).

For comment on jurisdiction over foreign corporations not transacting business in North Carolina, see 2 Wake Forest Intra. L. Rev. 1 (1966).

The jurisdiction created by this section pertains only to local actions and has no application to any cause of action arising outside the State. Atlantic Coast Line R.R. v. J. B. Hunt & Sons, 260 N.C. 717, 133 S.E.2d 644 (1963).

But Applies to Foreign Corporations Not Transacting Business in State.—This section governs jurisdiction over foreign corporations not transacting business in this State. Atlantic Coast Line R.R. v. J. B. Hunt & Sons, 260 N.C. 717, 133 S.E.2d 644 (1963).

Foreign corporations are by this section made subject to local suits by residents of this State in some situations where they have engaged in specified activity giving rise to a cause of action locally, even though they are not so "transacting business" as to be required to obtain a certificate of authority. Atlantic Coast Line R.R. v. J. B. Hunt & Sons, 260 N.C. 717, 133 S.E.2d 644 (1963).

By its terms, this section applies to foreign corporations not transacting business in North Carolina and so seems to be intended to take advantage of the liberal constitutional limits provided by the decision in International Shoe Co. v. Washington, 326 U.S. 310, 66 Sup. Ct. 154, 90 L. Ed. 95 (1945). Bowman v. Curt G. Joa, Inc., 361 F.2d 706 (4th Cir. 1966).

And Authorizes Personal Judgment.— Where a cause of action stated in a complaint or a cross action arises out of a transaction which falls within the terms of this section and service of process is had under § 55-146, the defendant is brought within the jurisdiction of the court for purposes of an in personam judgment. Farmer v. Ferris, 260 N.C. 619, 133 S.E.2d 492 (1963).

The federal court in a diversity action is bound by the jurisdictional limits placed on the North Carolina courts by the State legislature. Bowman v. Curt G. Joa, Inc., 361 F.2d 706 (4th Cir. 1966).

Criteria for Subjection of Corporation to Suit. — It is evident that the criteria by which the boundary line is marked between those activities which justify the subjection of a cororation to suit, and those which do not, cannot be simply mechanical or quantitative. Whether due process is satisfied must depend rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure. Long v. Burdette Mfg. Co., 294 F. Supp. 784 (W.D.N.C. 1968).

Sufficiency of Contacts and Manner of Service Present Question of Due Process.—Whether a foreign corporation has sufficient contacts within the State to subject it to service of process in an action in personam, and whether the manner of service is a reasonable method of notification to it of the action, present a question of due process which must be decided in accordance with the decisions of the Supreme Court of the United States upon the facts of each particular case upon the basis of what is fair and reasonable and just under the circumstances. Farmer v. Ferris, 260 N.C. 619, 133 S.E.2d 492 (1963).

Requirements of Due Process.—Due process requires only that, in order to subject a defendant to a judgment in personam if he be not present within the territory of the forum, he have certain minimum contacts with it, such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. Long v. Burdette Mfg. Co., 294 F. Supp. 784 (W.D.N.C. 1968); Epps v. Golden, 295 F. Supp. 520 (W.D.N.C. 1968).

Section 55-144 requires, etc.—

More contacts with the forum State are required in order to come within the limits of § 55-144 than are required under this section. Epps v. Golden, 295 F. Supp. 520 (W.D.N.C. 1968).

Section 55-144 concerns "foreign corporations transacting business in the State" and, therefore, necessarily seems to be more restrictive in its application than this section, the latter section dealing with "foreign corporations not transacting business" in the State. The foreign corporation must have more contacts with the forum State in order to come within the statutory limits of § 55-144. Long v. Burdette Mfg. Co., 294 F. Supp. 784 (W.D.N.C. 1968); Epps v. Golden, 295 F. Supp. 520 (W.D.N.C. 1968).

Substantial Contacts Make Exercise of Jurisdiction Just.—Direct, substantial and uninterrupted contacts by a foreign corporation with this State make it reasonable and just for the court to exercise its jurisdiction over such foreign corporation as authorized by this section. Farmer v. Ferris, 260 N.C. 619, 133 S.E.2d 492 (1963).

When the activities of the foreign corporation in the forum state have not only been continuous and systematic, but also give rise to the liabilities sued on, the forum state does not violate due process by taking jurisdiction of the suit instituted by a resident of such state, even though no consent to be sued or authorization to an agent to accept service of process has been given. Byham v. National Cibo House Corp., 265 N.C. 50, 143 S.E.2d 225 (1965).

Defendant Must Have Purposely Availed Itself of Privilege of Conducting Activities.—It is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protection of its law. Byham v. National Cibo House Corp., 265 N.C. 50, 143 S.E.2d 225 (1965).

To the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations, and, so far as those obligations arise out of and are connected with the activities within the state, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue. Byham v. National Cibo House Corp., 265 N.C. 50, 143 S.E.2d 225 (1965).

Cause of Action Must Arise in State Out of One of Delineated Activities.—This section confers jurisdiction over any cause of action arising out of any one of four specific and well-delineated activities. If one of these four activities is present but the cause of action arises elsewhere, or if none of the four activities is present although others may be present, there is no jurisdictional grant. Bowman v. Curt G. Joa, Inc., 361 F.2d 706 (4th Cir. 1966).

Contract Substantially Connected with State Is Sufficient.—It is sufficient for the purposes of due process if the suit is based on a contract which has substantial connection with the forum state. Byham v. National Cibo House Corp., 265 N.C. 50, 143 S.E.2d 225 (1965).

An agent was acting in behalf of defendant in this State in negotiating a contract with plaintiff, and it was reasonable to infer that plaintiff's letter to defendant, in response to the advertisement in the local paper, was referred to the agent by defendant. The agent wrote plaintiff on defendant's stationery and arranged a meeting. When plaintiff's signature to the contract was obtained, defendant accepted it and thereby accepted the benefits of the agent's activities and ratified them. Defendant, as its initial step in performing the contract, sent a representative to this State to assist in procuring a location for plaintiff's "Cibo House." It was held that it did not lie in the mouth of defendant to say that it had no contacts with this State. Byham v. National Cibo House Corp., 265 N.C. 50, 143 S.E.2d 225 (1965).

But Not Casual Presence of Agent.—The casual presence of the corporate agent or even his conduct of single or isolated activity in a state in the corporation's behalf are not enough to subject it to suit on causes of action unconnected with the activities there. Byham v. National Cibo House Corp., 265 N.C. 50, 143 S.E.2d 225 (1965).

A contract made in this State is one which is executed in this State, i.e., where the "final act necessary to make it a binding obligation was done" in this State. Bowman v. Curt G. Joa, Inc., 361 F.2d 706 (4th Cir. 1966).

But Contract Is Made Elsewhere When Final Act Is Done Out of State.—There was sufficient evidence to support the finding of the court below that the final act of executing a sales contract was the signature by the seller in Wisconsin, and thus the contract was to be considered made in Wisconsin. Bowman v. Curt G. Joa, Inc., 361 F.2d 706 (4th Cir. 1966).

Subsection (a) (1) Only Applies to Contracts to Be Performed Here to Substantial Degree. — States which have sought to bring within the jurisdiction of their courts foreign corporations which contract with residents of the State, whether the whole or any part of the contract is to be performed in the forum state, have drafted their "long arm" statutes to read "to be performed in whole or in part" in the State. North Carolina has not chosen to use this broader language in its statute, and so subsection (a) (1) of this section must be construed as relating only to those contracts that are to be performed to a substantial degree within the forum state. Bowman v. Curt G. Joa, Inc., 361 F.2d 706 (4th Cir. 1966).

This was a sales contract for a machine with delivery f.o.b. the seller's plant in Wisconsin. Almost the entire performance of the contract was to occur at the seller's manufacturing plant, the buyers to accept delivery there and pay all shipping costs to their North Carolina business site. The seller was to provide one technician for one day at the buyers' plant to advise appellants on how they were to install the machine. After the buyers had completed the installation, seller's technician was to return to North Carolina and inspect the installation and supervise the initial production run on the machine. The substantial portion of the overall contract performance therefore occurred at appellee's manufacturing plant in Wisconsin, and subsection (a) (1) did not apply. Bowman v. Curt G. Joa, Inc., 361 F.2d 706 (4th Cir. 1966).

Initial contact between the parties occurred when a representative of plaintiff visited defendant's office in Chicago to discuss the manufacture of certain molds for plastic cigar tips. Defendant per plaintiff's request submitted a quotation to plaintiff in Durham. Plaintiff then submitted a purchase order to defendant containing certain specified terms not included in the quotation. This was accompanied by an acknowledgment copy of the purchase order, which copy defendant was required to execute and return to plaintiff. Thereafter, defendant shipped the mold f.o.b. Chicago to plaintiff in Durham. It was held that the contract was neither made nor to be performed in North Carolina so as to acquire jurisdiction under subsection (a) (1) of this section. Golden Belt Mfg. Co. v. Janler Plastic Mold Corp., 281 F. Supp. 368 (M.D.N.C. 1967), aff'd, 391 F.2d 266 (4th Cir. 1968).

Size of Claim Is Pertinent. — When claims are small or moderate, individual claimants frequently cannot afford the cost of bringing an action in a foreign forum, thus placing the foreign corporation beyond the reach of the claimant. Whether this is the situation in a given case is pertinent. Byham v. National Cibo House Corp., 265 N.C. 50, 143 S.E.2d 225 (1965).

As Is Presence of Witnesses and Evidence.—Consideration should be given to the question whether the crucial witnesses and material evidence are to be found in the forum state. Byham v. National Cibo House Corp., 265 N.C. 50, 143 S.E.2d 225 (1965).

And Inconvenience to Corporation.—An estimate of the inconveniences which would result to the corporation from a trial away from its home or principal place of business is relevant. Byham v. National Cibo House Corp., 265 N.C. 50, 143 S.E.2d 225 (1965).

And Whether State's Courts Are Open to Suits by Foreign Corporation. — Consideration should be given to the question whether the courts of the forum state are open to the foreign corporation to enforce obligations of residents of such state created by the activities and contacts of the corporation. Byham v. National Cibo

House Corp., 265 N.C. 50, 143 S.E.2d 225 (1965).

As They Are in This State.—The courts of the State have been and now are open to a foreign corporation for protection of its activities and to enforce the valid obligations which a resident or residents of this State have assumed by reason of defendant's contacts and activities. Byham v. National Cibo House Corp., 265 N.C. 50, 143 S.E.2d 225 (1965).

Consideration should be also given to any legitimate interest the State has in protecting its residents with respect to the activities and contacts of the foreign corporation. Byham v. National Cibo House Corp., 265 N.C. 50, 143 S.E.2d 225 (1965).

This State has a legitimate interest in the establishment and operation of enterprises and trade within its borders and the protection of its residents in the making of contracts with persons and agents who enter the State for that purpose. Byham v. National Cibo House Corp., 265 N.C. 50, 143 S.E.2d 225 (1965).

Form of Substituted Service Must Give Reasonable Assurance of Notice. — The form of substituted service adopted by the forum state must give reasonable assurance that the notice to defendant will be actual. Byham v. National Cibo House Corp., 265 N.C. 50, 143 S.E.2d 225 (1965).

Burden of Suing Away from Home Need Not Always Fall on Plaintiff.—There is almost always some hardship to the party required to litigate away from home. But there is no constitutional requirement that this hardship must invariably be borne by the plaintiff whenever the defendant is a nonresident. Byham v. National Cibo House Corp., 265 N.C. 50, 143 S.E.2d 225 (1965).

But Failure to Provide for Service on Foreign Corporations Does Not Deny Due Process.—It is essential to determine the extent to which the legislature of the forum state has given authority to its courts to entertain litigation against foreign corporations. Provisions for making foreign corporations subject to service in the forum state is a matter of legislative discretion, and a failure to provide for such service is not a denial of due process. Byham v. National Cibo House Corp., 265 N.C. 50, 143 S.E.2d 225 (1965).

Subsection (a) (3) Is Inapplicable Where Machine Sold Never Enters State.—Subsection (a) (3) of this section was not applicable to an action for breach of a sales contract by a seller in Wisconsin, where the machine sold to North Carolina buyers under the contract had never entered North Carolina nor been used there. Bowman v. Curt G. Joa, Inc., 361 F.2d 706 (4th Cir. 1966).

Facts Insufficient to Bring Action within Subsection (a) (3). — Where the parties were both commercial concerns dealing on equal footing at arm's length, and the defendant had never solicited, advertised, or transacted business in North Carolina, and its only contact with this State was the contract in suit, which was made and substantially performed in another state, it was held that to subject the defendant to the in personam jurisdiction of the courts in North Carolina under subsection (a) (3) of this section would violate due process. Golden Belt Mfg. Co. v. Janler Plastic Mold Corp., 281 F. Supp. 368 (M.D.N.C. 1967), aff'd, 391 F.2d 266 (4th Cir. 1968).

Plea Insufficient to Bring Action within Subsection (a) (4). — In an action for breach of a sales contract, the buyers sought to bring their action within subsection (a) (4) of this section by alleging that the seller never intended to perform the contract, but planned to deceive the buyers and cause them to act to their detriment. This plea was insufficient to bring the action within subsection (a) (4). The theme of the action was contract and not tort. Bowman v. Curt. G. Joa, Inc., 361 F.2d 706 (4th Cir. 1966).

Applied in Spartan Equip. Co. v. Air Placement Equip. Co., 263 N.C. 549, 140 S.E.2d 3 (1965); Schnur & Cohan, Inc. v. McDonald, 220 F. Supp. 9 (M.D.N.C. 1963), appeal dismissed, 328 F.2d 103 (4th Cir. 1964).

Cited in Abney Mills v. Tri-State Motor Transit Co., 268 N.C. 313, 150 S.E.2d 585 (1966).

§ 55-146. Service on foreign corporations by service on Secretary of State.

Service on the Secretary of State, etc.— In accord with original. See Spartan Equip. Co. v. Air Placement Equip. Co., 263 N.C. 549, 140 S.E.2d 3 (1965).

Such Service Authorizes in Personam Judgment.—Where a cause of action stated in a complaint arises out of a transaction which falls within the terms of § 55-145 and service of process is had under this section, the defendant is brought within the jurisdiction of the court for purposes of an in personam judgment. Farmer v. Ferris, 260 N.C. 619, 133 S.E.2d 492 (1963).

Stipulation Held to Concede Service

Reasonably Assures Notice. — Where the parties stipulated that "the mechanics of service and return set forth in subsections (a) and (b) of § 55-146 of the General Statutes of North Carolina were in all respects complied with," it was held that it was conceded that this section gives reasonable assurance that the notice to defendant will be actual, and in this case was actual. Byham v. National Cibo House Corp., 265 N.C. 50, 143 S.E.2d 225 (1965).

Cited in Abney Mills v. Tri-State Motor Transit Co., 265 N.C. 61, 143 S.E.2d 235 (1965); Bowman v. Curt G. Joa, Inc., 361 F.2d 706 (4th Cir. 1966); Epps v. Golden, 295 F. Supp. 520 (W.D.N.C. 1968).

§ **55-146.1. Alternative jurisdiction over and service of process on foreign corporations.**—In addition to the procedure set out in this chapter, foreign corporations may be served with process and subjected to the jurisdiction of the courts of this State pursuant to applicable provisions of chapter 1 and chapter 1A of the General Statutes. (1967, c. 954, s. 3.)

Editor's Note. — Session Laws 1969, c. 803, amends Session Laws 1967, c. 954, s. 10, so as to make the 1967 act effective Jan. 1, 1970. See Editor's note to § 1A-1.

The Rules of Civil Procedure (§ 1A-1) and the jurisdiction statute (§ 1-75.1 et seq.) which accompanies them seek to secure for the courts of North Carolina the full extent of jurisdiction constitutionally allowable to them, and accordingly there is duplication of some of the "long arm" statutes already in force in this State with regard to corporations and insurers. It is the purpose of this section and §§ 55A-68.1 and 58-153.2 to allow service of process and the obtaining of jurisdiction under either procedure.

§ **55-154. Transacting business without certificate of authority.**

Applied in State ex rel. Glamorgan Pipe & Foundry Co. v. Benfield, 266 N.C. 342, 145 S.E.2d 912 (1966).

Stated in Westarc Leasing Corp. v. Capi-
S.E.2d 204 (1966).
tal Sign Serv., Inc., 268 N.C. 601, 151

ARTICLE 11.

Fees and Taxes.

§ **55-155. Fees.**—(a) In addition to any taxes prescribed by G.S. 55-156, the Secretary of State shall collect the following fees and remit them to the State Treasurer for the use of the State:

(1)	For filing an application to reserve or register a corporate name and for filing an application to renew such a registration (G.S. 55-12 (f) and (h)),	$ 5.00
(2)	For filing a notice of transfer of a reserved corporate name (G.S. 55-12 (g)),	5.00
(3)	For filing articles of incorporation (G.S. 55-7),	5.00
(4)	For filing an application of a foreign corporation for a certificate of authority to transact business in this State and issuing a certificate of authority (G.S. 55-138),	5.00
(5)	For filing a statement of classification of shares (G.S. 55-42 (e)),	5.00
(6)	For filing a statement of the change of a registered office or registered agent, or both, of a domestic or foreign corporation (G.S. 55-14, G.S. 55-142, G.S. 55-153),	3.00
(7)	For filing a notice of resignation of a registered agent (G.S. 55-14 (d)),	1.00
(8)	For filing a notice of resignation of a nonresident director under G.S. 55-33 (a),	1.00
(9)	For filing a certificate of reduction of capital (G.S. 55-48),	5.00
(10)	For filing articles of amendment (G.S. 55-103),	5.00
(11)	For filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to transact business in this State (G.S. 55-147),	5.00

(12) For filing a restated charter (G.S. 55-105),	5.00
(13) For filing an application of a foreign corporation for an amended certificate of authority to transact business in this State and issuing an amended certificate of authority (G.S. 55-149),	5.00
(14) For filing articles of merger or consolidation (G.S. 55-109),	5.00
(15): Repealed by Session Laws 1969, c. 751, s. 45, effective October 1, 1969.	
(16) For filing a copy of articles of merger of a foreign corporation holding a certificate of authority to transact business in this State (G.S. 55-148),	5.00
(17) For filing a statement setting forth the name and address in this State of the registered agent of a foreign corporation not transacting business in this State (G.S. 55-145),	5.00
(18) For receiving any service of process as statutory agent either of a corporation or of a director of a corporation (G.S. 55-15 (b), G.S. 55-33 (d), G.S. 55-146),	1.00
which amount may be recovered from the adverse party as taxable costs by the party to the action or proceeding causing such service to be made if such party prevails in the action or proceeding.	
(19) For issuing a certificate of revocation of authority of a foreign corporation (G.S. 55-152),	5.00
(20): Repealed by Session Laws 1969, c. 751, s. 45, effective October 1, 1969.	
(21) For filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal (G.S. 55-150),	5.00
(22) For filing articles of voluntary dissolution by directors (G.S. 55-116),	5.00
(23) For filing articles of voluntary dissolution by written consent of shareholders (G.S. 55-117),	5.00
(24) For filing articles of voluntary dissolution by action of directors and stockholders (G.S. 55-118),	5.00
(25) For filing a statement of revocation of dissolution (G.S. 55-120),	2.00
(26) For filing a certificate of completed liquidation (G.S. 55-121),	2.00
(27) For preparing and furnishing a copy of any document, instrument or paper filed or recorded relating to a corporation (G.S. 55-4 (c)):	
For the first page thereof,	1.00
For each additional page,	.40
For affixing his certificate and official seal thereto,	2.00
(28) For comparing a copy furnished to him of any document, instrument or paper filed or recorded relating to a corporation:	
For each page,	.20
For affixing his certificate and official seal thereto,	2.00
(29) For filing any other document not herein specifically provided for,	5.00

(b) The filing fees hereinbefore prescribed do not include copies or certified copies and the fees for such copies are those prescribed by subdivisions (27) and (28) of subsection (a) of this section.

(c) For recording and copying any corporate document or paper required by this chapter to be recorded in his office, the register of deeds shall collect such amounts as are prescribed by G.S. 161-10 or other applicable laws. (1957, c. 1180; 1967, c. 823, s. 20; 1969, c. 751, ss. 43, 45; c. 797, s. 4.)

Cross Reference.—See Editor's note to § 53-5.

Editor's Note. — The 1967 amendment, effective Jan. 1, 1968, substituted "register of deeds" for "clerk of superior court" and "G.S. 161-10" for "G.S. 2-26" in subsection (c).

The first 1969 amendment, effective Oct.

1, 1969, rewrote subdivision (1) of subsection (a) and eliminated former subdivisions (15), relating to filing a statement of merger or consolidation of a domestic and foreign corporation, and (20), relating to filing a certificate extending the period of existence of a corporation, of subsection (a).

The second 1969 amendment added "In addition to any taxes prescribed by G.S. 55-156" at the beginning of subsection (a).

§ **55-156. Taxes.**—(a) In addition to any fees prescribed by G.S. 55-155, on filing any of the following certificates or papers relative to corporations in the office of the Secretary of State, the following taxes shall be collected by the Secretary of State, and remitted to the State Treasurer for the use of the State:

(1) Articles of incorporation:	
For each $1,000.00 of the total amount of capital stock authorized,	$ .40
but in no case less than	40.00
nor more than	1,000.00
(2) Articles of amendment which include an authorization to increase capital stock:	
For each $1,000.00 of the total increase authorized,	.40
but in no case less than	40.00
nor more than	1,000.00
(3) Articles of amendment which do not include an authorization to increase capital stock,	40.00
(4) Articles of dissolution,	5.00
(5) Application by foreign corporation for certificate of authority to transact business in this State:	
For each $1,000.00 of its authorized capital stock,	.40
but in no case less than	40.00
nor more than	500.00
(6) Articles of merger or consolidation which increase the authorized capital stock which the surviving or new corporation, domestic or foreign, will have authority to issue above the aggregate authorized capital stock which the constituent domestic corporations and constituent foreign corporations authorized to transact business in this State had authority to issue:	
For each $1,000.00 of the total amount of such increase	.40
but in no case less than	40.00
nor more than	1,000.00
(7) Articles of merger or consolidation which do not increase the authorized capital stock which the surviving or new corporation, domestic or foreign, will have authority to issue above the aggregate authorized capital stock which the constituent domestic corporations and constituent foreign corporations authorized to transact business in this State had authority to issue,	40.00

(b) For the purpose of computing taxes under this section, shares of no par value shall be treated as if they were of one dollar ($1.00) par value. (1957, c. 1180; 1969, c. 751, s. 42; c. 797, s. 5.)

Editor's Note.—The first 1969 amendment, effective Oct. 1, 1969, substituted "one dollar ($1.00)" for "one hundred dollar ($100.00)" in subsection (b).

The second 1969 amendment added "In addition to any fees prescribed by G.S. 55-155" at the beginning of subsection (a).

ARTICLE 12.

Curative Provisions.

§ 55-158. Certain corporate conveyances validated.

Quoted in Investors Corp. v. Field Financial Corp., 5 N.C. App. 156, 167 S.E.2d 852 (1969).

Chapter 55A.

Non-Profit Corporation Act.

Article 3.

Formation, Name and Registered Office.

Sec.
55A-8. Corporate existence; filing of articles of incorporation; effect.

Article 4.

Powers and Management.

55A-27.1. Form of records.

Article 6.

Fundamental Changes.

Sec.
55A-37.1. Restated charter.

Article 8.

Foreign Corporations.

55A-68.1. Alternative jurisdiction over and service of process on foreign corporations.

ARTICLE 1.

General Provisions.

§ 55A-1. Title.

Cited in Coats v. Sampson County Memorial Hosp., Inc., 264 N.C. 332, 141 S.E.2d 490 (1965); Sigmund Sternberger Foundation v. Tannenbaum, 273 N.C. 658, 161 S.E.2d 116 (1968).

§ 55A-3. Applicability of chapter.—(a) The provisions of this chapter relating to domestic corporations shall apply to:

(1) All corporations hereafter organized under this chapter.

(2) All nonprofit corporations heretofore organized under any act hereby repealed, except nonprofit corporations having capital stock.

(3) All nonprofit corporations without capital stock heretofore or hereafter organized under any other act, unless there is some other specific statutory provision particularly applicable to such corporations or inconsistent with some provisions of this chapter, in which case that other provision prevails. Nothing herein shall apply to hospital and medical service corporations as defined in chapter 57 of the General Statutes which were incorporated prior to July 1, 1957 or repeal or modify the provisions of G.S. 54-138.

(b) The provisions of this chapter relating to foreign corporations shall apply to all such corporations conducting affairs in this State for purposes for which a corporation might be organized under this chapter. (1955, c. 1230; 1967, c. 659.)

Editor's Note.—The 1967 amendment substituted "as defined in chapter 57 of the General Statutes which were incorporated prior to July 1, 1957" for "regulated by chapter 57 of the General Statutes" in subdivision (3) of subsection (a).

ARTICLE 2.

Execution and Filing of Certain Corporate Documents.

§ 55A-4. Execution of corporate documents for filing; filing, recording and effectiveness.—(a) Whenever the provisions of this chapter require any document relating to a corporation to be executed and filed in accordance with this section, unless otherwise specifically stated in this chapter:

(1) There shall be an original executed document and also one conformed copy.

(2) The said original document shall, if required to be executed by the corporation, be signed by the president or a vice-president and also by the secretary or an assistant secretary, with or without the corporate seal. If required to be executed by designated individuals each of them shall sign.

(3) Except where the provisions of this chapter specifically require acknowledgment, the said original document shall be verified by each of the individuals signing, whether in a representative capacity or otherwise, by a statement under oath, made before and certified by an official who is authorized under the laws of this State to take acknowledgments, declaring that he signed the said document, that the statements therein are true, and, in the case of an individual who signed in a representative capacity, declaring the capacity in which he signed and that he was authorized so to sign.

(4) The conformed copy may either extend its conformation with the original document through all the verifications (or acknowledgments, as the case may be) or may in lieu of such extension contain the legend, after the name of the signers, substantially as follows:

"Original duly verified (acknowledged) by all signers."

(5) The original document so signed and verified (or acknowledged, as the case may be), together with the conformed copy, shall be delivered to the Secretary of State. Unless he finds that it does not conform to law, the Secretary of State shall, when the proper taxes and fees have been tendered. endorse upon the original the word "filed" and the hour, day, month, and year of the filing thereof, and shall file the same in his office. The Secretary of State shall thereupon immediately compare the copy with the original and if he finds that they are identical he shall make upon the conformed copy the same endorsement which appears on the original and shall attach to the copy a certificate stating that attached thereto is a true copy of the document, designated by an appropriate title, filed in his office and showing the date of such filing. He shall thereupon return the copy so certified to the corporation or its representative.

(6) The copy, certified as aforesaid, shall be promptly delivered to the register of deeds of the county wherein the corporation has its registered office, and, when the proper fees shall have been tendered, it shall be recorded and properly indexed in a book to be known as the Record of Incorporations. Promptly after recordation, the register of deeds shall note the fact of recordation on the said copy and return it to the corporation or its representative.

(b) Any such document required to be filed shall be completely effective when endorsed by the Secretary of State as provided in subsection (a) (5) above and the transaction to be effectuated thereby shall thereupon be deemed to be completely consummated as if all the required recording had been perfected, provided, however, that in lieu of the time of such endorsement by the Secretary of State, such document may fix an hour, day, month and year not more than twenty days subsequent to the endorsement of the Secretary of State and the transaction shall be deemed to be completely consummated at the time fixed by such document as if all the required recording had been perfected. Unless otherwise provided in this chapter with respect to some specific document, failure to deliver it for recording in the office of the register of deeds shall only subject the corporation to a penalty of one hundred dollars ($100.00) to be collected by the Secretary of State.

(c) It shall be the duty of the Secretary of State, whenever so requested and upon tender of the proper fees, to certify as aforesaid any true copy of any such document on file in his office or, if such be the request, to make or cause to be made typewritten or photostatic copies of such documents and to certify the same as aforesaid. (1955, c. 1230; 1967, c. 13, s. 2; c. 823, s. 21.)

Cross Reference.—See Editor's note to § 53-5.

Editor's Note.—The first 1967 amendment rewrote subsection (b).

The second 1967 amendment, effective Jan. 1, 1968, substituted "register of deeds" for "clerk of the superior court" in the first sentence and for "clerk" in the second sentence of subdivision (6) of subsection (a) and for "clerk of the superior court" in subsection (b).

ARTICLE 3.

Formation, Name and Registered Office.

§ **55A-6. Incorporators.**—One or more natural persons, whether or not residents of this State, of the age of 21 years or more may act as incorporators of a corporation by signing and acknowledging articles of incorporation, which shall be filed according to G.S. 55A-4. The acknowledgment shall be before an officer duly authorized under the laws of this State to take the proof or acknowledgment of deeds. (1955, c. 1230; 1969, c. 875, s. 1.)

Editor's Note. — The 1969 amendment, effective Oct. 1, 1969, substituted "One" for "Three" at the beginning of the section.

§ **55A-8. Corporate existence; filing of articles of incorporation; effect.**—The time when corporate existence begins is determined by the provisions of G.S. 55A-4, and a copy of the articles certified by the Secretary of State shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this chapter, except as against this State in a proceeding to annul or revoke the articles of incorporation. (1955, c. 1230; 1967, c. 13, s. 4.)

Editor's Note.—The 1967 amendment rewrote this section.

§ **55A-9. Organization meeting of directors.**—After the filing of the articles of incorporation in the office of the Secretary of State an organization meeting of the board of directors named in the articles of incorporation shall be held, either within or without this State, at the call of a majority of the directors, for the purpose of adopting bylaws, electing officers and the transaction of such other business as may come before the meeting. The directors calling the meeting shall give at least three days notice thereof by mail to each director so named, which notice shall state the time and place of the meeting, unless notice is waived as hereinafter provided. Any action permitted to be taken at the organizational meeting may be taken without a meeting of the board of directors and shall be deemed board action if it complies with the requirements of G.S. 55A-86. (1955, c. 1230; 1969, c. 875, s. 2.)

Editor's Note. — The 1969 amendment, effective Oct. 1, 1969, added the last sentence.

§ **55A-10. Corporate name.**—(a) The corporate name shall not contain any word or phrase likely to mislead the public or which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its charter.

(b) The corporate name shall not, subject to the provisions of G.S. 55A-60, be the same as, or deceptively similar to, the name of any domestic corporation, whether for profit or not for profit, or of any foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this State, or a corporate name the exclusive right to which is at the time reserved or registered by some other person in the manner prescribed in this section or G.S. 55-12.

(c) The exclusive right to a corporate name not prohibited by this section may be reserved for a period of 90 days by:

(1) Any person intending to organize a corporation under this chapter,
(2) Any domestic corporation intending to change its name,
(3) Any foreign corporation intending to make application for a certificate of authority to conduct affairs in this State,
(4) Any foreign corporation authorized to conduct affairs in this State and intending to change its name, or
(5) Any person intending to organize a foreign corporation and intending to have such corporation make application for a certificate of authority to conduct affairs in this State.

The same name shall not be reserved for two or more consecutive 90-day periods by the same applicant or for the use and benefit of the same applicant; nor shall such consecutive reservations be made of names so similar as to fall within the prohibition of this section.

(d) Any person or corporation acquiring the good will of a domestic corporation or of a foreign corporation authorized to conduct affairs in this State may, on furnishing the Secretary of State satisfactory evidence of such acquisition, reserve the exclusive right to the corporate name of the said corporation for a period of ten years.

(e) The reservation of name, pursuant to subsections (c) and (d) of this section, shall be made by filing with the Secretary of State a verified application therefor stating the name and address of the applicant, and the Secretary of State shall, upon tender of the fee hereinafter prescribed, reserve the name exclusively for the applicant unless he finds that the name is not available under the provisions of this section.

(f) The exclusive right to a specified corporate name reserved hereunder, may, on tender of the fee hereinafter prescribed, be transferred to any other person or corporation by filing in the office of the Secretary of State a notice of such transfer, executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

(g) Any foreign corporation not conducting affairs in this State may register its corporate name, if not prohibited by this section, by filing with the Secretary of State a verified application therefor setting forth the name and address of the principal office of the corporation, the jurisdiction in which it is incorporated, the date of its incorporation, a statement that it is organized and conducting affairs in good standing under the laws of the jurisdiction in which it is incorporated, and a brief statement of the business in which it is engaged; and the Secretary of State shall, upon tender of the fee prescribed by G.S. 55A-77 (a), register the name exclusively for the use of such foreign corporation, unless he finds that the name is not available under the provisions of this section. Such registration shall be effective for a period of one year, and it may be renewed from year to year, not to exceed ten years, by filing with the Secretary of State a verified renewal application setting forth the same facts required to be set forth in the original application for registration. Any renewal application filed after the expiration of the registration shall be treated as a new application for registration.

(h) The Secretary of State may revoke any reservation or registration of a corporate name if he finds, upon a hearing held not less than five days after written notice has been sent by registered mail to the person or corporation who made the reservation or registration, that the application therefor or any transfer thereof was not made in good faith or that any statement contained in the application for reservation or registration was false when such application was filed or has thereafter become false.

(i) The use by a corporation of a name in violation of this section may be enjoined notwithstanding the filing of its articles by the Secretary of State. (1955, c. 1230; 1969, c. 875, s. 3.)

Editor's Note. — The 1969 amendment, effective Oct. 1, 1969, rewrote this section.

ARTICLE 4.

Powers and Management.

§ **55A-15. General powers.**

(b) In connection with carrying out the purposes stated in its charter, and subject to any limitation prescribed by this chapter or in its charter, every corporation shall also have power:

(1) To purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, own, hold, improve, use and otherwise deal in and with, real or personal property, or any interest therein, wherever situated.

(2) To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets.

(3) To acquire, by purchase, subscription, gift, will or otherwise, and to own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, domestic or foreign business corporations, associations, partnerships or individuals, or direct or indirect obligations of the United States or of any government, state, territory, governmental district or municipality or of any instrumentality thereof.

(4) To make contracts and incur liabilities, borrow money, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises and income.

(5) To procure for its benefit insurance on the life or physical or mental ability of any employee, including any officer, or, in case of a religious, educational, or charitable corporation, any sponsor, contributor, student or former student, whose death or disability might cause financial loss to the corporation, and to this end the corporation has an insurable interest in the lives of each of such persons.

(6) To lend money for its corporate purposes, invest its funds from time to time, and take and hold real and personal property as security for the payment of funds so loaned or invested.

(7) To conduct its affairs, carry on its operations, and have offices and exercise the powers granted by this chapter anywhere in the world.

(8) To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized. (1955, c. 1230; 1957, c. 783, s. 7; 1969, c. 875, s. 4.)

Editor's Note.—

The 1969 amendment, effective Oct. 1, 1969, inserted "or physical or mental ability" and "or disability" in subdivision (5) of subsection (b).

As subsection (a) was not changed by the amendment, it is not set out.

§ **55A-23. Committees.**—(a) Unless otherwise provided in the charter or bylaws, the board of directors, by resolution adopted by a majority of the number of directors then in office may designate one or more committees each of which shall consist of two or more directors, which committees, to the extent provided in such resolution, in the charter or in the bylaws of the corporation, shall have and exercise the authority of the board of directors in the management of the corporation, except that no such committee shall have authority as to the following matters:

(1) The dissolution, merger or consolidation of the corporation; the amendment of the charter of the corporation; or the sale, lease or exchange of all or substantially all of the property of the corporation.
(2) The designation of any such committee or the filling of vacancies in the board of directors or in any such committee.
(3) The amendment or repeal of the bylaws, or the adoption of new bylaws.
(4) The amendment or repeal of any resolution of the board which by its terms shall not be so amendable or repealable.

(b) Other committees not having and exercising the authority of the board of directors in the management of the corporation may be designated by a resolution adopted by a majority of the directors present at a meeting at which a quorum is present.

(c) Any committee, or any member thereof may be discharged or removed by action of a majority of the board of directors pursuant to the provisions of G.S. 55A-22 or G.S. 55A-86. The designation of any committee and the delegation thereto of authority shall not operate to relieve the board of directors or any member thereof, of any responsibility or liability imposed upon it or him by law. (1955, c. 1230; 1969, c. 875, s. 5.)

Editor's Note. — The 1969 amendment, effective Oct. 1, 1969, rewrote this section.

§ **55A-27.1. Form of records.**—Any records maintained by a corporation in the regular course of its business, including its books of account and minute books, may be kept on, or be in the form of, punch cards, magnetic tape, photographs, microphotographs, or any other information storage device; provided that the records so kept can be converted into clearly legible form within a reasonable time. Any corporation shall so convert any records so kept upon the request of any person entitled to inspect the same. Where records are kept in such manner, the cards, tapes, photographs, microphotographs or other information storage device together with a duly authenticated readout or translation shall be admissible in evidence, and shall be accepted for all other purposes, to the same extent as an original written record of the same information would have been. (1969, c. 875, s. 6.)

Editor's Note. — Session Laws 1969, c. 875, s. 12, makes the act effective Oct. 1, 1969.

ARTICLE 6.

Fundamental Changes.

§ **55A-37.1. Restated charter.** — (a) At any time after its charter has been amended, a corporation may by action of its board of directors, without necessity of vote of the members, cause to be prepared a document entitled "Restated Charter," which shall integrate into one document its original articles of incorporation (or articles of consolidation) and all amendments thereto, including those affected by articles of merger or consolidation, except that: In lieu of the address of the initial registered office and the name of the initial registered agent, the restated charter shall state the address of the then registered office and the name of its then registered agent.

(b) The restated charter shall also set forth that it purports merely to restate but not to change the provisions of the original articles of incorporation as supplemented and amended and that there is no discrepancy, other than as expressly permitted by this section, between the said provisions and the provisions of the restated charter.

(c) The restated charter shall be executed by the corporation and be filed as provided in G.S. 55A-4.

(d) A copy of the restated charter certified by the Secretary of State shall be presumed, until otherwise shown, to be the full and true charter of the corporation as in effect on the date when so certified.

(e) A corporation may also integrate its articles of incorporation and all amendments thereto by the procedure provided in this chapter for amending the charter. (1965, c. 762.)

§ 55A-41. Articles of merger or consolidation. — (a) Upon such approval, articles of merger or articles of consolidation shall be executed by each corporation and filed as provided in G.S. 55A-4, except that a copy thereof certified by the Secretary of State shall also be recorded in the office of the register of deeds of each county wherein the constituent corporations have their registered offices.

(1967, c. 823, s. 22.)

Cross Reference.—See Editor's note to § 53-5

Editor's Note. — The 1967 amendment, effective Jan. 1, 1968, substituted "register of deeds" for "clerk of the superior court" in subsection (a).

As subsections (b) and (c) were not changed by the amendment, they are not set out.

§ 55A-42. Effect of merger or consolidation.

(4) Such surviving or new corporation shall thereupon and thereafter, to the extent consistent with its charter as established or changed by the merger or consolidation, possess all the rights, privileges, immunities, and franchises, as well of a public as of a private nature, of each of the merging or consolidating corporations; and all property, real, personal, and mixed, and all debts due on whatever account, and all other choses in action, and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed; and the title to any real estate, or any interest therein, vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation. The provisions of this subdivision are subject to the provisions of G.S. 47-18.1, with regard to the registration of certificates of merger or consolidation if the title to real property is affected.

(1967, c. 950, s. 2.)

Editor's Note. — The 1967 amendment, effective Oct. 1, 1967, added the last sentence in subdivision (4).

As the rest of the section was not affected by the amendment, it is not set out.

ARTICLE 7.

Dissolution and Liquidation.

§ 55A-56. Duties of officials as to decrees and orders concerning dissolution.—A court decree effecting or canceling a dissolution of a corporation or a court order declaring liquidation completed shall contain a direction to the clerk of that court promptly to file one certified copy of such decree or order with the Secretary of State and also to file a certified copy thereof with the register of deeds of the county wherein the corporation has its registered office. The fees for the preparation, certificates, and filing of such decree or order shall be taxed as a part of the costs in the action. (1955, c. 1230; 1967, c. 823, s. 23.)

Cross Reference.—See Editor's note to § 53-5.

Editor's Note. — The 1967 amendment, effective Jan. 1, 1968, substituted "register of deeds" for "clerk of the superior court" in the first sentence and deleted, at the end of that sentence, "unless the decree or order was entered in that court."

ARTICLE 8.

Foreign Corporations.

§ 55A-60. Corporate name of foreign corporation.

(b) The corporate name shall not be the same as, or deceptively similar to, the name of any domestic corporation, whether for profit or not for profit, or any foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this State, or a name the exclusive right to which is, at the time, reserved or registered in the manner prescribed in G.S. 55A-10, except that the Secretary of State may in his discretion issue a certificate of authority to a foreign corporation which has a corporate name the same as or similar to that of some other domestic corporation or foreign corporation authorized to transact business or conduct affairs in this State:

(1) If the Secretary of State finds, upon proof by affidavit or otherwise, that such corporations are not engaged in the conduct of the same or similar affairs and that the public is not likely to be confused or deceived, and if, upon requirement by the Secretary of State in his discretion, such foreign corporation agrees in its application for certificate of authority to add to its corporate name in this State words indicating the state or country under the laws of which it is incorporated; or

(2) If the foreign corporation agrees in its application for certificate of authority to conduct affairs in this State only under an assumed name that would be available for its use in this State, in which event such corporation shall thereafter comply with all of the provisions of law, including the provisions of G.S. 66-68 through 66-71, relating to doing business under an assumed name and such assumed name shall be deemed to be the name of such foreign corporation in this State and shall be entitled to the same protections under this chapter as if it were the name of such foreign corporation.

(1969, c. 875, s. 7.)

Editor's Note. — The 1969 amendment, effective Oct. 1, 1969, rewrote subsection (b).

As subsections (a) and (c) were not changed by the amendment, they are not set out.

§ **55A-61. Application for certificate of authority.**—(a) A foreign corporation, in order to procure a certificate of authority to conduct affairs in this State, shall make application therefor to the Secretary of State, which application shall set forth:

(1) The name of the corporation and the state or country under the laws of which it is incorporated;

(2) If the corporation agrees under G.S. 55A-60 (b) to add to its corporate name in this State words indicating its jurisdiction of incorporation or agrees to conduct affairs under an assumed name, then the name of the corporation with the words so added or the assumed name;

(3) The date of incorporation and the period of duration of the corporation;

(4) The address of the principal office of the corporation in the state or country under the laws of which it is incorporated;

(5) The address, including county and city or town, and street and number, if any, of the proposed registered office of the corporation in this State, and the name of its proposed registered agent in this State at such address;

(6) The purposes of the corporation which it proposes to pursue in conducting its affairs in this State;

(7) The names and respective addresses of the directors and officers of the corporation;

(8) A statement that, in consideration of the issuance of a certificate of authority to conduct affairs in this State, the corporation appoints the Secretary of State of North Carolina as its agent to receive service of process, notice, or demand whenever the corporation fails to appoint or maintain a registered agent in this State, or whenever any such registered agent cannot with reasonable diligence be found at the registered office.

(b) Such application shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary, and verified by one of its officers signing such application. (1955, c. 1230; 1957, c. 979, s. 14; 1969, c. 875, s. 8.)

Editor's Note.—

The 1969 amendment, effective Oct. 1, 1969, inserted present subdivisions (2) in subsection (a) and renumbered former subdivisions (2) through (7) of subsection (a) as (3) through (8). The amendment also deleted "purpose or" preceding "purposes" in present subdivision (6) of subsection (a).

§ **55A-68.1. Alternative jurisdiction over and service of process on foreign corporations.**—In addition to the procedures set out in this chapter foreign corporations may be served with process and subjected to the jurisdiction of the courts of this State pursuant to applicable provisions of chapter 1 and chapter 1A of the General Statutes. (1967, c. 954, s. 3.)

Editor's Note. — Session Laws 1969, c. 803, amends Session Laws 1967, c. 954, s. 10, so as to make the 1967 act effective Jan. 1, 1970. See Editor's note to § 1A-1.

ARTICLE 9.

Fees and Taxes.

§ **55A-77. Fees.**—(a) The Secretary of State shall collect the following fees and remit them to the State Treasurer for the use of the State:

(1) For filing articles of incorporation (G.S. 55A-7), ... $5.00

(2) For filing an application of a foreign corporation for a certificate of authority to conduct affairs in this State and issuing a certificate of authority (G.S. 55A-61), ... 5.00

(3) For filing an application of a foreign corporation for an amended certificate of authority to conduct affairs in this State and issuing an amended certificate of authority (G.S. 55A-71), ... 5.00

(4) For filing articles of amendment (G.S. 55A-36), ... 5.00

(5) For filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to conduct affairs in this State (G.S. 55A-69), ... 5.00

(6) For filing articles of merger or consolidation (G.S. 55A-41), ... 5.00

(7) For filing a copy of articles of merger of a foreign corporation holding a certificate of authority to conduct affairs in this State (G.S. 55A-70), ... 5.00

(8) For receiving any service of process as statutory agent of a corporation (G.S. 55A-13, G.S. 55A-68, G.S. 55A-75), ... 1.00 which amount may be recovered from the adverse party as tax-

able costs by the party to the action or proceeding causing such service to be made if such party prevails in the action or proceeding.	
(9) For filing a notice of resignation of a registered agent (G.S. 55A-12 (d)),	1.00
(10) For filing a statement of the change of registered office or registered agent of a domestic or foreign corporation (G.S. 55A-65, G.S. 55A-75, G.S. 55A-12),	3.00
(11) For filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal (G.S. 55A-72),	5.00
(12) Issuance of a certificate of revocation of authority (G.S. 55A-74),	5.00
(13) For filing articles of dissolution (G.S. 55A-48),	5.00
(14) For preparing and furnishing a copy of any document, instrument or paper filed or recorded relating to a corporation (G.S. 55A-4 (c)):	
for the first page thereof,	1.00
for each additional page,	.40
for affixing his certificate and official seal thereto,	2.00
(15) For comparing a copy furnished to him of any document, instrument or paper filed or recorded relating to a corporation:	
for each page,	.20
for affixing his certificate and official seal thereto,	2.00
(16) For filing an application to reserve or register a corporate name and for filing an application to renew such a registration G.S. 55A-10 (e) and (f),	5.00
(17) For filing any other document not herein specifically provided for,	5.00

(c) For recording and copying any corporate document or paper required by this chapter to be recorded in his office, the register of deeds shall collect such amounts as are prescribed by G.S. 161-10 or other applicable laws. (1957, c. 1179; 1967, c. 823, s. 24; 1969, c. 875, s. 10.)

Cross Reference.—See Editor's note to § 53-5.

Editor's Note. — The 1967 amendment substituted "register of deeds" for "clerk of superior court" and "G.S. 161-10" for "G.S. 2-26" in subsection (c).

The 1969 amendment, effective Oct. 1, 1969, inserted present subdivision (16) of subsection (a) and renumbered former subdivision (16) of subsection (a) as (17).

As the rest of the section was not changed by the amendments, only subsections (a) and (c) are set out.

ARTICLE 10.

Miscellaneous Provisions.

§ **55A-86. Action by members without a meeting.**—Any action required by this chapter to be taken at a meeting of the members or of the board of directors, or of a committee of directors, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter thereof, or by a majority of the directors, or by a majority of the members of the committee of directors, as the case may be, and filed with the secretary of the corporation as part of the corporate records, whether done before or after the action so taken; provided, however, that this shall not apply whenever the charter or the bylaws of the corporation specifically require that such action be by a unanimous vote. (1955, c. 1230; 1963, c. 786; 1969, c. 875, s. 9.)

Editor's Note.—

The 1969 amendment, effective Oct. 1, 1969, rewrote this section.

Chapter 55B.

Professional Corporation Act.

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55B-12. Application of regulations of licensing boards.
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55B-14. Types of professional services.
55B-15. Applicability of chapter.

§ **55B-1. Title.**—This chapter may be cited as "The Professional Corporation Act." (1969, c. 718, s. 1.)

Editor's Note. — Session Laws 1969, c. 718, s. 23, makes the act effective Jan. 1, 1970.

§ **55B-2. Definitions.**—As used in this chapter, the following words shall, unless the context requires otherwise, have the following meanings:

(1) "Disqualified person" means a licensed person who for any reason becomes legally disqualified to render the same professional services which are or were being rendered by the professional corporation of which such person is an officer, director, shareholder or employee.

(2) "Licensee" means any natural person who is duly licensed by the appropriate licensing board to render the same professional services which will be rendered by the professional corporation of which he is, or intends to become, an officer, director, shareholder or employee.

(3) "Licensing board" means a board which is charged with the licensing and regulating of the profession or practice in this State in which the professional corporation is organized to engage.

(4) The term "licensing board," as the same applies to attorneys at law, shall mean the Council of the North Carolina State Bar, and it shall include the North Carolina State Board of Law Examiners only to the extent that the North Carolina Board of Law Examiners is authorized to issue licenses for the practice of law under the supervision of the Council of the North Carolina State Bar.

(5) "Professional corporation" means a corporation which is engaged in rendering the professional services as herein specified and defined pursuant to a certificate of registration issued by the licensing board regulating the profession or practice, and which has as its shareholders only individuals who themselves are duly licensed to render the same professional service as the corporation, and which designates itself as may be required by this statute, and which is organized under the provisions of this chapter and of chapter 55, the Business Corporation Act.

(6) The term "professional service" means any type of personal or professional service to the public which requires as a condition precedent to the rendering of such service the obtaining of a license from a licensing board as herein defined, and pursuant to the following provisions of the General Statutes: Chapter 83, "Architects"; chapter 84, "Attorneys at Law"; chapter 93, "Public Accountants"; and article 1, "Practice of Medicine," article 2, "Dentistry," article 6, "Optometry," article 7,

"Osteopathy," article 8, "Chiropractic," article 11, "Veterinaries," article 12, "Podiatrists," of chapter 90; article 18A, "Practicing Psychologist," of chapter 90; chapter 89, "Engineering and Land Surveying." (1969, c. 718, s. 2.)

§ **55B-3. Business Corporation Act applicable.**—The Business Corporation Act shall be applicable to such professional corporations, including their organization, and professional corporations shall enjoy the powers and privileges and shall be subject to the duties, restrictions and liabilities of other corporations, except insofar as the same may be limited or enlarged by this chapter. If any provision of this chapter conflicts with the provisions of the Business Corporation Act, the provisions of this chapter shall prevail. (1969, c. 718, s. 3.)

§ **55B-4. Formation of corporation.**—A professional corporation under this chapter may be formed pursuant to the provisions of chapter 55, the Business Corporation Act, with the following limitations:

(1) At least one incorporator shall be a "licensee" as hereinabove defined in § 55B-2 (2).
(2) All of the shares of stock of the corporation shall be owned and held by a licensee, or licensees, as hereinabove defined in § 55B-2 (2).
(3) At least one director and one officer shall be a "licensee" as hereinabove defined in § 55B-2 (2).
(4) The articles of incorporation, in addition to the requirements of chapter 55, shall designate the personal services to be rendered by the professional corporation and shall be accompanied by a certification by the appropriate licensing board that each of the owners of shares of stock is duly licensed to render such professional services. (1969, c. 718, s. 4.)

§ **55B-5. Corporate name.**—The corporate name used by professional corporations under this chapter, except as limited by the licensing acts of the respective professions, shall be governed by the provisions of chapter 55, the Business Corporation Act; provided that professional corporations may use the words "Professional Association" or "P.A." in lieu of the corporate designations specified in chapter 55; and provided further that licensing boards by regulations may make further corporate name requirements or limitations for the respective professions, but such regulations may not prohibit the continued use of any corporate name duly adopted in conformity with the General Statutes and with the pertinent licensing board regulations in effect at the date of such adoption. (1969, c. 718, s. 5.)

§ **55B-6. Capital stock.**—A professional corporation may issue shares of its capital stock only to a licensee as hereinabove defined, and such shareholders may voluntarily transfer such shares of stock issued to him only to another such licensee. No share or shares of any stock of such corporation shall be transferred upon the books of the corporation unless and until the corporation has received a certification of the appropriate licensing board that the transferee of such shares is a licensee as here defined. Any share of stock of such corporation issued or transferred in violation of this section shall be null and void. No shareholder of a professional corporation shall enter into a voting trust agreement or any other type of agreement vesting in another person the authority to exercise the voting power of any or all of his stock. (1969, c. 718, s. 6.)

§ **55B-7. Death or disqualification of a stockholder or employee.**—(a) If any officer, shareholder, agent or employee of a corporation organized under this chapter who is a licensee becomes legally disqualified to render professional services within this State, he shall sever all employment with, and financial interest in, such corporation forthwith. A corporation's failure to comply with this provision shall constitute grounds for the forfeiture of its certificate of incorporation and its dissolution. When a corporation's failure to comply with this provision is brought to the attention of the Secretary of State, the Secretary of State shall forthwith certify that fact to the Attorney General for appropriate action to dissolve the corporation.

(b) A professional corporation shall report to the appropriate licensing board the death of any of its shareholders within 30 days thereafter. Within one year of the date of such death, all of the shares owned by such deceased shareholder shall be transferred to and acquired by the professional corporation or persons qualified to own such shares. In the absence of an agreement which determines the equitable value of the shares, then the price for such shares shall be the fair market value of the stock, but not less than the book value as of the end of the month immediately preceding the death or disqualification. Notwithstanding any other provisions of this chapter, the shares of stock owned by such deceased shareholder may be owned and held by the person or persons who may be legally entitled to receive such shares for a period of one year after the death of such deceased shareholder, or in the case of the death of the owner of all the shares of such corporation, for such period of time as may be necessary to liquidate the corporation. (1969, c. 718, s. 7.)

§ **55B-8. Rendition of professional services.** — A professional service corporation may render professional services only through its officers, employees and agents who are duly licensed to render such professional services; provided, however, this provision shall not be interpreted to include in the term "employee," as used herein, clerks, secretaries, bookkeepers, technicians and other assistants who are not considered by law to be rendering professional services to the public. (1969, c. 718, s. 8.)

§ **55B-9. Professional relationship and liability.**—Nothing in this chapter shall be interpreted to abolish, modify, restrict, limit or alter the law in this State applicable to the professional relationship and liabilities between the person furnishing the professional services and the person receiving such professional service, or the standards of professional conduct applicable to the rendering therein of such services. (1969, c. 718, s. 9.)

§ **55B-10. Registration with licensing board.**—No professional corporation shall open, operate, or maintain an establishment for any of the purposes set forth in this chapter without first having obtained a certificate of registration from the licensing board or boards. Applications for such registration shall be made to the licensing board or boards in writing and shall contain the name and address of the corporation and such other information as may be required by the licensing board or boards. If the board finds that no disciplinary action is pending before the board against any of the licensed incorporators, officers, directors, shareholders or employees of such corporation, and if it appears that such corporation will be conducted in compliance with the law and the regulations of the board, the board shall issue, upon the payment of a registration fee, not to exceed fifty dollars ($50.00), a certificate of registration which shall remain effective until January 1 following the date of such registration or until such other expiration or renewal date as may be established by law or by the regulations of the licensing board. (1969, c. 718, s. 10.)

§ **55B-11. Renewal of certificate of registration.**—Upon written application of the holder, accompanied by a fee not to exceed the sum of twenty-five dollars ($25.00), the licensing board shall renew the certificate of registration of a professional corporation as required by law or the regulations of the licensing board if the board finds that the corporation has complied with its regulations and the provisions of this section. If the corporation does not apply for renewal of its certificate of registration within thirty days after the date of the expiration of such certificate, the certificate of registration shall be automatically suspended and may be reinstated within the calendar year upon the payment of the required renewal fee plus a penalty of ten dollars ($10.00), if such corporation is then otherwise qualified and entitled to a renewal of its certificate of registration. (1969, c. 718, s. 11.)

§ **55B-12. Application of regulations of licensing boards.**—A professional corporation shall be subject to the applicable rules and regulations adopted by, and all the disciplinary powers of, the licensing board as herein defined. Nothing in this chapter shall impair the disciplinary powers of any licensing board applicable to a licensee as herein defined. No professional corporation may do any act which its shareholders as licensees are prohibited from doing. (1969, c. 718, s. 12.)

§ **55B-13. Suspension or revocation of certificate of registration.**—A licensing board may suspend or revoke a certificate of registration issued by it to a professional corporation for any of the following reasons:

(1) Upon the failure of such corporation to promptly remove or discharge an officer, director, shareholder or employee who becomes disqualified by reason of the revocation or suspension of his license to practice; or
(2) Upon a finding by the licensing board that the professional corporation has failed to comply with the provisions of this chapter or the regulations of the licensing board.

Upon the suspension or revocation of a certificate of registration issued to a professional corporation, such corporation shall cease forthwith to render professional services, and the Secretary of State shall be notified to the end that the corporation may be removed from active status and remain as such until reinstatement. (1969, c. 718, s. 13.)

§ **55B-14. Types of professional services.**—A professional corporation shall render only one specific type professional service, and such services as may be ancillary thereto, and shall not engage in any other business or profession; provided, however, such corporation may own real and personal property necessary or appropriate for rendering the type of professional services it was organized to render and it may invest in real estate, mortgages, stocks, bonds, and any other type of investments; provided further, that in the case of architectural, engineering or land surveying services, as defined in chapters 83 and 89 respectively, one corporation may be authorized to provide such of these services where such corporation, and at least one corporate officer who is a stockholder thereof, is duly licensed by the licensing board of each such profession. (1969, c. 718, s. 14.)

§ **55B-15. Applicability of chapter.**—This chapter shall not apply to any corporation which prior to June 5, 1969 was permitted by law to render professional services as herein defined; provided, however, any such corporation rendering "professional service" as defined in § 55B-2 (6) may be brought within the provisions of this chapter by the filing of an amendment to its articles of incorporation declaring that its shareholders have elected to bring the corporation within the provisions of this chapter and to make the same conform to all of the provisions of this chapter. (1969, c. 718, s. 15.)

Chapter 57.

Hospital, Medical and Dental Service Corporations.

Sec.
57-1. Regulation and definitions; application of other laws; profit and foreign corporations prohibited.

§ **57-1. Regulation and definitions; application of other laws; profit and foreign corporations prohibited.** — Any corporation heretofore or hereafter organized under the general corporation laws of the State of North Carolina for the purpose of maintaining and operating a nonprofit hospital and/or medical and/or dental service plan whereby hospital care and/or medical and/or dental service may be provided in whole or in part by said corporation or by hospitals and/or physicians and/or dentists participating in such plan, or plans, shall be governed by this chapter and shall be exempt from all other provisions of the insurance laws of this State, heretofore enacted, unless specifically designated herein, and no laws hereafter enacted shall apply to them unless they be expressly designated therein.

The term "hospital service plan" as used in this chapter includes the contracting for certain fees for, or furnishing of, hospital care, laboratory facilities, X-ray facilities, drugs appliances, anesthesia, nursing care, operating and obstetrical equipment, accommodations and/or any and all other services authorized or permitted to be furnished by a hospital under the laws of the State of North Carolina and approved by the North Carolina Hospital Association and/or the American Medical Association.

The term "medical service plan" as used in this chapter includes the contracting for the payment of fees toward, or furnishing of, medical, obstetrical, surgical and/or any other professional services authorized or permitted to be furnished by a duly licensed physician, except that in any plan in any policy of insurance governed by this chapter that includes services which are within the scope of practice of a duly licensed optometrist and a duly licensed physician, then the insured or beneficiary shall have the right to choose the provider of the care or service, and shall be entitled to payment of or reimbursement for such care or service, whether the provider be a duly licensed optometrist or a duly licensed physician notwithstanding any provision to the contrary contained in such policy. The term "medical services plan" also includes the contracting for the payment of fees toward, or furnishing of, professional medical services authorized or permitted to be furnished by a duly licensed provider of health services licensed under chapter 90 of the General Statutes.

The term "dental service plan" as used in this chapter includes contracting for the payment of fees toward, or furnishing of dental and/or any other professional services authorized or permitted to be furnished by a duly licensed dentist.

The insured or beneficiary of every "medical service plan" and of every "dental service plan," as those terms are used in this chapter, or of any policy of insurance issued thereunder, that includes services which are within the scope of practice of both a duly licensed physician and a duly licensed dentist shall have the right to choose the provider of such care or service, and shall be entitled to payment of or reimbursement for such care or service, whether the provider be a duly licensed physician or a duly licensed dentist notwithstanding any provision to the contrary contained in any such plan or policy.

The term "hospital service corporation" as used in this chapter is intended to mean any nonprofit corporation operating a hospital and/or medical and/or dental service plan, as herein defined. Any corporation heretofore or hereafter organized and coming within the provisions of this chapter, the certificate of incorporation of which authorizes the operation of either a hospital or medical and/or dental service plan, or any or all of them, may, with the approval of the Commissioner of Insurance, issue subscribers' contracts or certificates approved by the Commissioner of Insurance, for the payment of either hospital or medical and/or dental fees, or the furnishing of such services, or any or all of them, and may enter into contracts with hospitals for physicians and/or dentists, or any or all of them, for the furnishing of fees or services respectively under a hospital or medical and/or dental service plan, or any or all of them.

No foreign or alien hospital or medical and/or dental service corporation as herein defined shall be authorized to do business in this State. (1941, c. 338, s.

1; 1943, c. 537, s. 1; 1953, c. 1124, s. 1; 1961, c. 1149; 1965, c. 396, s. 1; c. 1169, s. 1; 1967, c. 690, s. 1.)

Cross Reference.—

As to false or fraudulent statements in connection with claims for insurance benefits, see § 14-112.1.

Editor's Note.—

The first 1965 amendment, effective July 1, 1965, added the exception at the end of the first sentence of the third paragraph. Section 4 of the act provides that it shall not be construed to equate optometrists with physicians except to the extent that each must be duly licensed.

The second 1965 amendment, effective Jan. 1, 1966, inserted the present fifth paragraph. Section 4 of the act provides that the right to payment or reimbursement notwithstanding any provision to the contrary contained in any plan or policy shall be applicable only to those plans and policies entered into, issued, or renewed after the effective date of the act, there being no legislative intent to impair or enlarge obligations under any existing contracts.

The 1967 amendment, effective July 1, 1967, added the second sentence of the third paragraph.

Session Laws 1967, c. 690, s. 4, provides: "Nothing in this act shall be construed to equate podiatrists with physicians except to the extent that each must be duly licensed."

Applicable Provisions of Chapter 58.—

For provisions of chapter 58 of the General Statutes made applicable to medical service plan policies and hospital service plan policies issued under this chapter, see § 58-251.3 and the note thereto.

§ **57-14. Taxation.**—Every corporation subject to the provisions of this chapter is hereby declared to be a charitable and benevolent corporation and all of its funds and property shall be exempt from every State, county, district, municipal and school tax or assessment, and all other taxes and license fees, from the payment of which charitable and/or benevolent institutions are now or shall be hereafter exempt. Provided, however, nothing herein contained shall prevent or prohibit corporations subject to the provisions of this chapter from paying for services rendered by municipalities and counties. For the purpose of raising revenues sufficient to defray the expenses of the administration of this chapter, and in lieu of all other taxes, an annual franchise or privilege tax is hereby levied upon every corporation subject to the provisions of this chapter at the rate of one third of one per cent of the gross annual collections from membership dues exclusive of receipts from cost plus plans. The General Assembly of North Carolina does hereby appropriate the sum of four thousand dollars ($4,000.00) annually from its general funds to be paid over to the Department of Insurance of this State for its use in the discharge of the duties by this chapter imposed upon the Commissioner of Insurance of this State. (1941, c. 338, s. 14; 1965, c. 1128.)

Editor's Note.—

The 1965 amendment, effective July 1, 1965, inserted the present second sentence.

§ **57-19. Merger or consolidation, proceedings for.**—Any two (2) or more hospital and/or medical and/or dental service corporations organized under and/or subject to the provisions of this chapter as determined by the Commissioner of Insurance may, as shall be specified in the agreement hereinafter required, be merged into one of such constituent corporations, herein designated as the surviving corporation, or may be consolidated into a new corporation to be formed by the means of such consolidation of the constituent corporations, which new corporation is herein designated as the resulting or consolidated corporation, and the directors and/or trustees, or a majority of them, of such corporations as desire to consolidate or merge, may enter into an agreement signed by them and under the corporate seals of the respective corporations, prescribing the terms and conditions of consolidation or merger, the mode of carrying the same into effect and stating such other facts as can be stated in the case of a consolidation or merger, stated in such altered form as the circumstances of the case require, and with such other details as to conversion of certificates of the subscribers as are deemed necessary and/or proper.

Said agreement shall be submitted to the certificate holders of each constituent corporation, at a separate meeting thereof, called for the purpose of taking the same into consideration; of the time, place and object of which meeting due notice shall be given by publication once a week for two consecutive weeks in some newspaper published in Raleigh, North Carolina, and in the counties in which the principal offices of the constituent corporations are located, and if no such paper is published in the county of the principal office of such constituent corporations, then said notice shall be posted at the courthouse door of said county or counties for a period of two weeks.

Said printed or posted notices shall be in such form and of such size as the Commissioner of Insurance may approve. A true copy of said notices shall be filed with the Commissioner of Insurance.

Such publication and filing of notices shall be completed at least fifteen (15) days prior to the date set therein for the meeting, and due proof thereof shall be filed with the Commissioner of Insurance at least ten days prior to the date of such meeting.

At this meeting those present in person or represented by proxy shall constitute a quorum and said agreement shall be considered and voted upon by ballot in person or by proxy or both taken for the adoption or rejection of the same; and if the votes of two thirds of those at said meeting voting in person or by proxy shall be for the adoption of the said agreement, then that fact shall be certified on said agreement by the president and secretary of each such corporation, under the seal thereof.

The agreement so adopted and certified shall be signed by the president or vice-president and secretary or assistant secretary of each of such corporations under the corporate seals thereof and acknowledged by the president or vice-president of each such corporation before any officer authorized by the laws of this State to take acknowledgment of deeds to be the respective act, deed, and agreement of each of said corporations.

The said agreement shall be submitted to and approved by the Commissioner of Insurance, in advance of the merger or consolidation and his approval thereof shall be indicated by his signature being affixed thereto under the seal of his office

The Commissioner shall not approve any such plans, unless, after a hearing, he finds that it is fair, equitable to certificate holders and members, consistent with law, and will not conflict with the public interest.

The agreement so certified and acknowledged with the approval of the Commissioner of Insurance noted thereon, shall be filed in the office of the Secretary of State, and shall thenceforth be taken and deemed to be the agreement and act of consolidation or merger of said corporations; and a copy of said agreement and act of consolidation or merger duly certified by the Secretary of State under the seal of his office shall also be recorded, in the office of the register of deeds of the county of this State in which the principal office of the surviving or consolidated corporation is, or is to be established, and in the office of the registers of deeds of the counties of this State in which the respective corporations so merging or consolidating shall have their original certificates of incorporation recorded, and also in the office of the register of deeds in each county in which either or any of the corporations entering into merger or consolidation owns any real estate; and such record, or a certified copy thereof, shall be evidence of the agreement and act of consolidation or merger of said corporations, and of the observance and performance of all acts and conditions necessary to have been observed and performed precedent to such consolidation or merger. When an agreement shall have been signed, authorized, adopted, acknowledged, approved, and filed and recorded as hereinabove set forth in this section, for all purposes of the laws of this State, the separate existence of all constituent corporations, parties to said agreement, or of all such constituent corporations, except the one into which the other or others of such constituent corporations have been merged, as the case may be, shall cease and the constituent corporations shall become a new corporation, or be merged into one of such corporations, as the case may be, in accordance with the provisions of said agreement, possessing all the rights, privileges, powers and franchises as well of a public as of a private nature, of each of said constituent corporations, and all and singular, the rights, privileges, powers and franchises of each of said corporations, and all property, real, personal and mixed, and all debts due to any of said constituent corporations on whatever account, shall be vested in the corporation resulting from or surviving such consolidation or merger, and all property, rights, privileges, powers, and franchises and all and every other interest shall be thereafter as effectually the property of the resulting or surviving corporation as they were of the several and respective constituent corporations, and the title to any real estate, whether vested by deed or otherwise, under the laws of this State, vested in any such constituent corporations shall not revert or be in any way impaired by reason of such consolidation or merger; provided, however, that all rights of creditors and all liens upon the property of either of or any of said constituent corporations shall be preserved, unimpaired, limited in lien to the propery affected by such lien at the time of the merger or consolidation, and all debts, liabilities, and duties of the respective constituent corporations shall thenceforth attach to said resulting or surviving corporation, and may be enforced against it to the same extent as if said debts, liabilities, and duties had been incurred or contracted by it; and further provided that notice of any said liens, debts, liabilities, and duties is given in writing to the resulting or surviving corporation within six months after the date of the filing of the agreement of merger in the office of the Secretary of State. All such liens, debts, liabilities, and duties of which notice is not given as provided herein are forever barred. The certificate of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that the changes in its certificates of incorporation are stated in the agreement of merger. All certificates theretofore issued and outstanding by each constituent corporation in good standing upon the date of the filing of such agreement with the Secretary of State without reissuance thereof by the resulting or surviving corporation shall be the contract and agreement of the resulting or surviving corporation with each of the certificate holders thereof and subject to all terms and conditions thereof and of the agreement of merger filed in the office of the Secretary of State.

Any action or proceeding pending by or against any of the corporations consolidated or merged may be prosecuted to judgment as if such consolidation or merger had not taken place, or the corporations resulting from or surviving such consolidation or merger may be substituted in its place.

The liability of such constituent corporations to the certificate holders thereof, and the rights or remedies of the creditors thereof, or persons doing or transacting business with such corporations, shall not, in any way, be lessened or impaired by the consolidation or merger of two or more of such corporations under the provisions of this section, except as provided in this section.

When two or more corporations are consolidated or merged, the corporation resulting from or surviving such consolidation or merger shall have the power and authority to continue any contracts which any of the constituent corporations might have elected to continue. All contracts entered into between any constituent corporations and any other persons shall be and become the contract of the resulting corporations according to the terms and conditions of said contract and the agreement of consolidation or merger.

For the filing of the agreement as hereinabove provided, the Secretary of State is entitled to receive such fees only as he would have received had a new corporation been formed.

Any agreement for merger and/or consolidation as shall conform to the provisions of this section, shall be binding and valid upon all the subscribers, certificate holders and/or members of such constituent corporations, provided only that any subscriber, certificate holder and/or member who shall so indicate his disapproval thereof to the resulting, consolidated or surviving corporation within ninety days after the filing of said agreement with the Secretary of State shall be entitled to receive all unearned portions of premiums paid on his certificate from and after the date of the receipt of the application therefor by the resulting, surviving, or consolidated corporation; each subscriber, certificate holder and/or member who shall not so indicate his or her disapproval of said agreement and said merger within said period of ninety days is deemed and presumed to have approved said agreement and said merger and/or consolidation and shall have waived his or her right to question the legality of said merger and/or consolidation.

No director, officer, subscriber, certificate holder and/or member as such of any such corporation, except as is expressly provided by the plan of merger or consolidation, shall receive any fee, commission, other compensation or valuable consideration whatever, for in any manner aiding, promoting or assisting in the merger or consolidation. (1947, c. 820, s. 8; 1961, c. 1149; 1967, c. 823, s. 25.)

Cross Reference.—See Editor's note to § 53-5.

Editor's Note.—

The 1967 amendment, effective Jan. 1, 1968, substituted "register of deeds" for "clerk of the superior court" and "registers of deeds" for "clerks of the superior courts" in the first sentence of the ninth paragraph.

Chapter 58.

Insurance.

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SUBCHAPTER I. INSURANCE DEPARTMENT.

Article 1.

Title and Definitions.

§ 58-1. Title of the chapter.

Editor's Note.—

For case law survey as to insurance, see 44 N.C.L. Rev. 1022 (1966); 45 N.C.L. Rev. 955 (1967).

§ 58-3. Contract of insurance.

Contract to Indemnify Assured for Loss Is Insurance Contract.—That portion of a contract under which a company agrees to indemnify the assured for loss or damage from perils therein defined, with provision for subrogation of the company to the right of assured against third persons, constitutes a contract of insurance. American Nat'l Fire Ins. Co. v. Gibbs, 260 N.C. 681, 133 S.E.2d 669 (1963).

But Contract to Pay Claims for Which Assured Liable Is Surety Contract. — A contract under which a company obligates itself to pay to any shipper or consignee, claims for which the assured would be liable by provision of § 62-111, with stipulation that the assured should reimburse the company for any such payment, is a surety contract and not a contract of insurance. American Nat'l Fire Ins. Co. v. Gibbs, 260 N.C. 681, 133 S.E.2d 669 (1963).

ARTICLE 2.

Commissioner of Insurance.

§ 58-5. Commissioner's election and term of office.

Quoted in Allstate Ins. Co. v. Lanier, 242 F. Supp. 73 (E.D.N.C. 1965).

§ 58-6. Salary of Commissioner. — The salary of the Commissioner of Insurance shall be twenty-two thousand, five hundred dollars ($22,500.00) a year, payable in equal monthly installments. (1899, c. 54, ss. 3, 8; 1901, c. 710; 1903, c. 42; c. 771, s. 3; Rev., s. 2756; 1907, c. 830, s. 10; c. 994; 1909, c. 839; 1913, c. 194; 1915, cc. 158, 171; 1917, c. 70; 1919, c. 247, s. 4; C. S., s. 3874; 1921, c. 25, s. 1; 1933, c. 282, s. 5; 1935, c. 293; 1937, c. 342; 1945, c. 383; 1947, c. 1041; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1; 1963, c. 1178, s. 6; 1967, c. 1130; c. 1237, s. 6; 1969, c. 1214, s. 6.)

Editor's Note.—

Both 1967 amendments increased the salary from $18,000 to $20,000. The first amendatory act provided that the increase should be effective Jan. 1, 1969, and the second amendatory act was made effective July 1, 1967.

The 1969 amendment, effective after July 1, 1969, increased the salary from $20,000 to $22,500.

§ 58-7. Bond of Commissioner.—The Commissioner of Insurance, before he enters upon the execution of his official duties, must give a bond to the State in the sum of twenty-five thousand dollars, with sufficient surety, to be approved by the State Treasurer, conditioned upon the faithful performance of the duties of his office during his term of office; this bond extends to the faithful execution of the office of Commissioner of Insurance by the person elected or appointed thereto until a new election or appointment of Commissioner of Insurance is made and a new bond given. Such bond shall be made as part of the blanket bond of State officers and employees provided for in G.S. 128-8. (1899, c. 54, s. 55; 1905, c. 430, s. 2; Rev., s. 293; C. S., s. 6265; 1969, c. 844, s. 7.)

Editor's Note. — The 1969 amendment added the second sentence.

§ 58-7.3. Other deputies, actuaries, examiners and employees.

Cross Reference.—As to assistant attorney general assigned to Commissioner and Insurance Department, see § 114-4.2a.

§ 58-9. Powers and duties of Commissioner. — The Commissioner shall:

(1) See that all laws of this State governing insurance companies, associations, orders or bureaus relating to the business of insurance are faithfully executed, and to that end he shall have power and authority to make rules and regulations, not inconsistent with law, to enforce, carry out and make effective the provisions of this chapter, and to make such further rules and regulations not contrary to any provision of this chapter which will prevent practices injurious to the public by insurance companies, fraternal orders and societies, agents and

adjusters. The Commissioner may likewise, from time to time, withdraw, modify or amend any such regulation.

(2) Have the power and authority to make and promulgate rules and regulations pertaining to and governing the solicitation of proxies, including financial reporting in connection therewith, with respect to the capital stock or other equity securities of any domestic stock insurance company.

(3) Furnish to the companies, associations, orders or bureaus required by this chapter to report to him, the necessary blank forms for the statements required, which forms may be changed by him from time to time when necessary to secure full information as to the standing, condition and such other information desired of companies, associations, orders or bureaus under the Insurance Department.

(4) Receive and thoroughly examine each annual statement required by this chapter and prepare an abstract of each annual statement at the expense of the company, association, order or bureau making the same and receive therefor the sum of four dollars. If the annual statement is made in compliance with the laws of this State, the Commissioner shall publish the abstract of the same, at the expense of the company, association, order or bureau making it, in one of the newspapers of the State, which newspaper may be selected by the company, association, order or bureau making the statement, if within thirty days after the filing of the statement, the Commissioner is notified in writing of the name of the paper selected.

(5) Report in detail to the Attorney General any violations of the laws relative to insurance companies, associations, orders and bureaus or the business of insurance, and he shall have power to institute civil actions or criminal prosecutions either by the Attorney General or such other attorney as the Attorney General may select, for any violation of the provisions of this chapter.

(6) Upon a proper application by any citizen of this State, give a statement or synopsis of the provisions of any insurance contract offered or issued to such citizen.

(7) Administer by himself or by his deputy all oaths required in the discharge of his official duty. (1899, c. 54, s. 8; 1905, c. 430, s. 3; Rev., s. 4689; C. S., s. 6269; 1945, c. 383; 1947, c. 721; 1965, c. 127, s. 1.)

Editor's Note.—

The 1965 amendment added present subdivision (2) and renumbered the remaining subdivisions.

Quoted in Allstate Ins. Co. v. Lanier, 242 F. Supp. 73 (E.D.N.C. 1965); State ex rel. Lanier v. Vines, 274 N.C. 486, 164 S.E.2d 161 (1968); State ex rel. Lanier v. Vines, 1 N.C. App. 208, 161 S.E.2d 35 (1968).

§ 58-9.1. Orders of Commissioner; when writing required.

Quoted in Allstate Ins. Co. v. Lanier, 242 F. Supp. 73 (E.D.N.C. 1965).

§ 58-9.2. Examinations, investigations and hearings; notice of hearing.—All examinations, investigations and hearings provided for by this chapter may be conducted by the Commissioner personally or by one or more of his deputies, investigators, actuaries, examiners or employees designated by him for the purpose. If the Commissioner or any investigator appointed to conduct such investigations is of the opinion that there is evidence to charge any person or persons with a criminal violation of the insurance laws he may arrest with warrant or cause such person or persons to be arrested. All hearings shall, unless otherwise specially provided, be held at such time and place as shall be designated in a notice which shall be given by the Commissioner in writing to the person cited to appear, at least ten days before the date designated therein. The notice shall state the subject of inquiry and the specific charges, if any. It shall be sufficient to give such notice either by delivering it to such person or by depositing the same in the United States mail, postage prepaid, and addressed to the last known place of business of such person. (1945, c. 383; 1969, c. 1009.)

Editor's Note. — The 1969 amendment inserted "investigators" in the first sentence and added the second sentence.

Quoted in Allstate Ins. Co. v. Lanier, 242 F. Supp. 73 (E.D.N.C. 1965).

§ 58-9.3. Court review of orders and decisions.

(d) Appeals from all final orders and judgments entered by the superior court in reviewing the orders and decisions of the Commissioner may be taken to the appellate division of the General Court of Justice by any party to the action as in other civil cases.

(1969, c. 44, s. 55.)

Editor's Note.—

The 1969 amendment substituted "appellate division of the General Court of Justice" for "Supreme Court of North Carolina" in subsection (d).

As the rest of the section was not changed by the amendment, only subsection (d) is set out.

The Commissioner's projection of past experience and present conditions into the future is presumed to be correct and proper if supported by substantial evidence and if he has taken into account all of the relevant facts which he is directed by statute to consider. In re North Carolina Fire Ins. Rating Bureau, 275 N.C. 15, 165 S.E.2d 207 (1969).

Quoted in Allstate Ins. Co. v. Lanier, 242 F. Supp. 73 (E.D.N.C. 1965); In re North Carolina Fire Ins. Rating Bureau, 2 N.C. App. 10, 162 S.E.2d 671 (1968).

Stated in Elmore v. Lanier, 270 N.C. 674, 155 S.E.2d 114 (1967).

Cited in State ex rel. North Carolina Util. Comm'n v. Old Fort Finishing Plant, 264 N.C. 416, 142 S.E.2d 8 (1965); State ex rel. Lanier v. Vines, 1 N.C. App. 208, 161 S.E.2d 35 (1968).

§ 58-10. Commissioner to supervise local inspectors.—The Commissioner shall exercise general supervision over local investigators of fires and fire prevention inspectors. Whenever the Commissioner has reason to believe that the local inspectors are not doing their duty, he or his deputy shall make special trips of inspection and take proper steps to have all the provisions of the law relative to the investigation of fires and the prevention of fire waste enforced. (1905, c. 506, s. 6; Rev., s. 4690; C. S., s. 6270; 1925, c. 89; 1969, c. 1063, s. 2.)

Editor's Note. — The 1969 amendment rewrote the first sentence of this section.

§ 58-13. Admissibility of certificate as evidence of agent's authority.

Editor's Note.—This catchline is set out in the Supplement to correct an error in the replacement volume.

ARTICLE 3.

General Regulations for Insurance.

§ 58-28. State law governs insurance contracts.

Cross Reference.—As to false or fraudulent statements in connection with claims for insurance benefits, see § 14-112.1.

§ 58-31.1. Proof of loss forms required to be furnished.

Cited in Northern Assur. Co. of America v. Spencer, 246 F. Supp. 730 (W.D.N.C. 1965).

§ 58-32. Insurance as security for a loan by the company.

Stated in Huski-Bilt, Inc. v. First-Citizens Bank & Trust Co., 271 N.C. 662, 157 S.E.2d 352 (1967).

§ 58-39.4. Definitions.

(aa) A producer of record is hereby defined to be an individual who is licensed as a fire and casualty insurance agent and as a resident insurance broker under the insurance laws of this State and who is designated by an assigned risk applicant as the producer of record on an assigned risk application.

(1965, c. 1047.)

Editor's Note.—

The 1965 amendment, effective April 1, 1966, added subsection (aa).

As the rest of the section was not affected by the amendment, it is not set out.

Cited in Security Nat'l Bank v. Educators Mut. Life Ins. Co., 265 N.C. 86, 143 S.E.2d 270 (1965).

§ 58-40. Agents and adjusters must procure license.

Cited in Security Nat'l Bank v. Educators Mut. Life Ins. Co., 265 N.C. 86, 143 S.E.2d 270 (1965).

§ 58-41. Agent's and adjuster's qualifications.

Opinions of Attorney General.—Honorable Edwin S. Lanier, Commissioner of Insurance, 8/13/69.

Cited in Security Nat'l Bank v. Educators Mut. Life Ins. Co., 265 N.C. 86, 143 S.E.2d 270 (1965).

§ 58-41.1. Examinations for license.

(d) The answers of the applicant to any such examination shall be written by the applicant under the Commissioner's supervision. The Commissioner shall give examinations at such times and places within this State as he deems necessary reasonably to serve the convenience of both the Commissioner and applicants. The Commissioner shall require a waiting period of at least thirty days' duration before giving a new examination to an applicant who has failed to pass a previous similar examination.

(1969, c. 1206.)

Editor's Note.—

The 1969 amendment substituted "thirty days'" for "ninety days'" in the third sentence of subsection (d).

As the rest of the section was not changed by the amendment, only subsection (d) is set out.

§ 58-42. Revocation of license.

Motions for Continuance and Bill of Particulars Are Addressed to Commissioner's Discretion.—In a hearing before the Commissioner of Insurance in proceedings for the revocation of an agent's license, the agent having been given more than the ten-day statutory notice, motions for a continuance and for a bill of particulars are addressed to the sound discretion of the Commissioner, and the denial of the motions will not be disturbed in the absence of a showing of abuse. Elmore v. Lanier, 270 N.C. 674, 155 S.E.2d 114 (1967).

Quoted in State ex rel. Lanier v. Vines, 274 N.C. 486, 164 S.E.2d 161 (1968).

§ 58-44.5. Rebates prohibited.

Stated in Goforth v. Avemco Life Ins. Co., 368 F.2d 25 (4th Cir. 1966).

§ 58-44.6. Imposition of civil penalty.

Constitutionality.—The attempted grant to the Commissioner of Insurance of judicial power to impose upon an insurance agent for a violation of the insurance laws a penalty, varying in the Commissioner's discretion from a nominal sum to $25,000, violates N.C. Const., Art. IV, § 3, there being no reasonable necessity for conferring such judicial power upon the Commissioner. State ex rel. Lanier v. Vines, 274 N.C. 486, 164 S.E.2d 161 (1968). But see State ex rel. Lanier v. Vines, 1 N.C. App. 208, 161 S.E.2d 35 (1968).

The Commissioner of Insurance is a real party in interest and is entitled to bring an action in the superior court to enforce the collection of a civil penalty imposed pursuant to this section. State ex rel. Lanier v. Vines, 1 N.C. App. 208, 161 S.E.2d 35 (1968).

Penalty to Be Paid Over to State Treasurer. — By clear implication of §§ 58-62 and 58-63, the amount of any monetary civil penalty imposed and collected as authorized by this section should be paid over to the State Treasurer. State ex rel. Lanier v. Vines, 1 N.C. App. 208, 161 S.E.2d 35 (1968).

§ 58-44.7. Rebate of premiums on credit life and credit accident and health insurance; retention of funds by agent.

A bank could not have legally made a refund of money which had gone, even through its hands, to an insurance company as premiums on credit life insurance. It is unlawful for an insurance company writing credit life insurance in connection with a loan to permit any agent to pay any rebate or refund any premiums without the consent of the policyholders. Huski-Bilt, Inc. v. First-Citizens Bank & Trust Co., 271 N.C. 662, 157 S.E.2d 352 (1967).

§ 58-47. Representing unlicensed company prohibited; penalty.

Cited in State ex rel. Lanier v. Vines, 274 N.C. 486, 164 S.E.2d 161 (1968); State ex rel. Lanier v. Vines, 1 N.C. App. 208, 161 S.E.2d 35 (1968).

§ 58-48. Agent failing to exhibit license.

Commissioner Cannot Require Prosecution or Punishment.—The Commissioner of Insurance has no authority to require the solicitor to institute or prosecute a criminal action nor to require a judge to punish the defendant upon conviction. Elmore v. Lanier, 270 N.C. 674, 155 S.E.2d 114 (1967).

§ 58-49. False statements in applications for insurance.—If any agent, examining physician, applicant, or other person shall knowingly or wilfully make any false or fraudulent statement or representation in or with reference to any application for insurance, or shall make any such statement for the purpose of obtaining any fee, commission, money or benefit from any company engaged in the business of insurance in this State, he shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00), or imprisonment in the county jail for not less than thirty days nor more than one year, or by both fine and imprisonment, at the discretion of the court. The provisions of this section shall be applicable to contracts and certificates issued pursuant to chapters 57 and 58 of the General Statutes. (1899, c. 54, s. 60; Rev., s. 3487; C. S., s. 6307; 1945, c. 458; 1947, c. 922; 1965, c. 911.)

Cross Reference.—As to false or fraudulent statements in connection with claims for insurance benefits, see § 14-112.1.

Editor's Note.—

The 1965 amendment, effective July 1, 1965, rewrote this section.

§ 58-53.1. Citizens authorized to procure policies in unlicensed foreign companies.

Cited in State ex rel. Lanier v. Vines, 274 N.C. 486, 164 S.E.2d 161 (1968).

§ 58-53.2. Punishment for failure to file affidavit and statements.

Cited in State ex rel. Lanier v. Vines, 274 N.C. 486, 164 S.E.2d 161 (1968); State ex rel. Lanier v. Vines, 1 N.C. App. 208, 161 S.E.2d 35 (1968).

ARTICLE 3A.

Unfair Trade Practices.

§ 58-54.4. Unfair methods of competition and unfair or deceptive acts or practices defined.

(10) Soliciting, etc., Unauthorized Insurance Contracts in Other States.—Soliciting, advertising or entering into insurance contracts in foreign states and any other jurisdiction in which such domestic insurer is not licensed in accordance with the laws of such state or jurisdiction,

except as provided in G.S. 58-54.27. (1949, c. 1112; 1955, c. 850, s. 3; 1967, c. 935, s. 2.)

Editor's Note.—

The 1967 amendment, effective July 1, 1967, added subdivision (10). Section 5, c. 935, Session Laws 1967, provides that the act shall not apply to any contracts of insurance in effect before its effective date.

As the rest of the section was not changed by the amendment, only subdivision (10) is set out.

§ 58-54.6. Hearings, witnesses, appearances, production of books and service of process.

Stated in State ex rel. Lanier v. Vines, 1 N.C. App. 208, 161 S.E.2d 35 (1968).

ARTICLE 3B.

Unauthorized Insurers False Advertising Process Act.

§ 58-54.14. Purpose; construction.—(a) The purpose of this article is to subject to the jurisdiction of the Commissioner of Insurance and to the jurisdiction of the courts of this State, insurers not authorized to transact business in this State which place in or send into this State any false advertising designed to induce residents of this State to purchase insurance from insurers not authorized to transact business in this State. The General Assembly declares it is in the interest of the citizens of this State who purchase insurance from insurers which solicit insurance business in this State in the manner set forth in the preceding sentence that such insurers be subject to the provisions of this article. In furtherance of such interest, the General Assembly in this article provides a method of substituted service of process upon such insurers and declares in so doing, it exercises its power to protect its residents and also exercises powers and privileges available to the State by virtue of Public Law 15, 79th Congress of the United States, chapter 20, 1st Session, § 340, which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states; the authority provided herein to be in addition to any existing powers of this State.

(b) The provisions of this article shall be liberally construed. (1965, c. 910.)

§ 58-54.15. Definitions.—As used in this article:

(1) "Residents" shall mean and include person, partnership or corporation, domestic, alien or foreign.

(2) "Unfair Trade Practice Act" shall mean article 3A of this chapter. (1965, c. 910.)

§ 58-54.16. Unlawful advertising; notice to unauthorized insurer and domiciliary insurance supervisory official.—No unauthorized foreign or alien insurer shall make, issue, circulate or cause to be made, issued or circulated, to residents of this State any estimate, illustration, circular, pamphlet, or letter, or cause to be made in any newspaper, magazine or other publication or over any radio or television station, any announcement or statement to such residents misrepresenting its financial condition or the terms of any contracts issued or to be issued or the benefits or advantages promised thereby, or the dividends or share of the surplus to be received thereon in violation of the Unfair Trade Practice Act, and whenever the Commissioner shall have reason to believe that any such insurer is engaging in such unlawful advertising, it shall be his duty to give notice of such fact by registered mail to such insurer and to the insurance supervisory official of the domiciliary state of such insurer. For the purpose of this section, the domiciliary state of an alien insurer shall be deemed to be the state of entry or the state of the principal office in the United States. (1965, c. 910.)

§ 58-54.17. Action by Commissioner under Unfair Trade Practice Act.—If after thirty days following the giving of the notice mentioned in § 58-54.16

such insurer has failed to cease making, issuing, or circulating such false misrepresentations or causing the same to be made, issued or circulated in this State, and if the Commissioner has reason to believe that a proceeding by him in respect to such matters would be to the interest of the public, and that such insurer is issuing or delivering contracts of insurance to residents of this State or collecting premiums on such contracts or doing any of the acts enumerated in § 58-54.18, he shall take action against such insurer under the Unfair Trade Practice Act. (1965, c. 910.)

§ 58-54.18. Acts appointing Commissioner as attorney for service of statement of charges, notices and process; manner of service; limitation on entry of order or judgment.—(a) Any of the following acts in this State, effected by mail or otherwise, by any such unauthorized foreign or alien insurer:

(1) The issuance or delivery of contracts of insurance to residents of this State,
(2) The solicitation of applications for such contracts,
(3) The collection of premiums, membership fees, assessments or other considerations for such contracts, or
(4) Any other transaction of insurance business,

is equivalent to and shall constitute an appointment by such insurer of the Commissioner of Insurance and his successor or successors in office, to be its true and lawful attorney, upon whom may be served all statements of charges, notices and lawful process in any proceeding instituted in respect to the misrepresentations set forth in § 58-54.16 hereof under the provisions of the Unfair Trade Practice Act, or in any action, suit or proceeding for the recovery of any penalty therein provided, and any such act shall be signification of its agreement that such service of statement of charges, notices or process is of the same legal force and validity as personal service of such statement of charges, notices or process in this State, upon such insurer.

(b) Service of a statement of charges and notices under said Unfair Trade Practice Act shall be made by any deputy or employee of the Insurance Department delivering to and leaving with the Commissioner or some person in apparent charge of his office, two copies thereof. Service of process issued by any court in any action, suit or proceeding to collect any penalty under said Act provided, shall be made by delivering and leaving with the Commissioner, or some person in apparent charge of his office, two copies thereof. The Commissioner shall forthwith cause to be mailed by registered mail one of the copies of such statement of charges, notices or process to the defendant at its last known principal place of business, and shall keep a record of all statements, charges, notices and process so served. Such service of statement of charges, notices or process shall be sufficient provided they shall have been so mailed and the defendant's receipt or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the person mailing such letter showing a compliance herewith are filed with the Commissioner in the case of any statement of charges or notices, or with the clerk of the court in which such action is pending in the case of any process, on or before the date the defendant is required to appear or within such further time as may be allowed.

(c) Service of statement of charges, notices and process in any such proceeding, action or suit shall in addition to the manner provided in subsection (b) of this section be valid if served upon any person within this State who on behalf of such insurer is

(1) Soliciting insurance, or
(2) Making, issuing or delivering any contract of insurance, or
(3) Collecting or receiving in this State any premium for insurance;

and a copy of such statement of charges, notices or process is sent within ten days thereafter by registered mail by or on behalf of the Commissioner to the defendant at the last known principal place of business of the defendant, and the defendant's receipt, or the receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter, the name and address of the person to whom the letter is addressed, and the affidavit of the person mailing the same showing a compliance herewith, are filed with the Commissioner in the case of any statement of charges or notices, or with the clerk of the court in which such action is pending in the case of any process, on or before the date the defendant is required to appear or within such further time as the court may allow.

(d) No cease or desist order or default judgment under this section shall be entered until the expiration of thirty days from the date of the filing of the affidavit of compliance.

(e) Service of process and notice under the provisions of this article shall be in addition to all other methods of service provided by law, and nothing in this article shall limit or prohibit the right to serve any statement of charges, notices or process upon any insurer in any other manner now or hereafter permitted by law (1965, c. 910.)

§ **58-54.19. Short title.**—This article may be cited as the Unauthorized Insurers False Advertising Process Act. (1965, c. 910.)

ARTICLE 3C.

Unauthorized Insurers.

§ **58-54.20. Purpose of article.**—It is the purpose of this article to abate and prevent the practices of unauthorized insurers within the State of North Carolina, and to provide methods for effectively enforcing the laws of this State against such practices. The General Assembly finds that there is within this State a substantial amount of insurance business being transacted by insurers who have not complied with the laws of this State and have not been authorized by the Commissioner of Insurance to do business. These practices by unauthorized insurers are deemed to be harmful and contrary to public welfare of the citizens of this State. The difficulties which arise from the acts and practices of unauthorized insurers is compounded by the fact that such companies are licensed in foreign jurisdictions and conduct a long-range business without having personal representatives or agents in proximity to insureds. The General Assembly further declares that it is a subject of vital public interest to the State that unlicensed and unauthorized companies have been and are now engaged in soliciting by way of direct mail and other advertising media, insurance risks within this State, and that such companies enjoy the many benefits and privileges provided by the State as well as the protection afforded to citizens under exercise of the police powers of the State, without themselves being subject to the laws designed to protect the insurance consuming public. The provisions of this article are in addition to all other statutory provisions of chapter 58 relating to unauthorized insurers and do not replace, alter, modify or repeal such existing provisions. (1967, c. 909, s. 1.)

Editor's Note. — Section 4, c. 909, Session Laws 1967, provides: "This act shall be effective on and after July 1, 1967, but the same shall not apply to any contracts of insurance in effect before the effective date of this act."

§ **58-54.21. Transacting business without certificate of authority prohibited; exceptions.**—Except as hereinafter provided, it shall be unlawful for any company to enter into a contract of insurance as an insurer or to transact insurance business in this State as set forth in § 58-54.22 of this article, without a certificate of authority issued by the Commissioner of Insurance. This section shall not apply to the following acts or transactions:

(1) The procuring of a policy of insurance upon a risk within this State where the applicant is unable to procure coverage in the open market with admitted companies and is otherwise in compliance with § 58-53.1;

(2) Contracts of reinsurance;

(3) Transactions in this State involving a policy lawfully solicited, written and delivered outside of this State covering only subjects of insurance not resident, located or expressly to be performed in this State at the time of issuance, and which transactions are subsequent to the issuance of such policy;

(4) Transactions in this State involving group or blanket insurance and group annuities where the master policy of such group insurance was lawfully issued and delivered in a state where the company was authorized to transact business;

(5) Transactions in this State involving all policies of insurance issued prior to July 1, 1967;

(6) The procuring of contracts of insurance issued to an "industrial insured" as hereinafter defined.

For the purposes of this section, an "industrial insured" is an insured (i) who procures the insurance of any risk or risks by use of the services of a full-time employee acting as an insurance manager or buyer, (ii) whose aggregate annual premiums for insurance on all risks total at least twenty-five thousand dollars ($25,000.00), and (iii) who has at least 25 full-time employees: Provided, nothing herein shall relieve such industrial insured from complying with the provisions of § 58-53.1. (1967, c. 909, s. 1.)

§ 58-54.22. Acts or transactions deemed to constitute transacting insurance business in this State.—The following acts, if performed in this State, shall be included among those deemed to constitute transacting insurance business in this State:

(1) a. Maintaining any agency or office where any acts in furtherance of an insurance business are transacted, including, but not limited to the execution of contracts of insurance with citizens of this or any other state;
  b. Maintaining files or records of contracts of insurance; or
  c. Receiving payments of premiums for contracts of insurance.

(2) Likewise, any of the following acts in this State, whether effected by mail or otherwise by an unauthorized insurer, is included among those deemed to constitute transacting insurance business in this State;
  a. The issuance or delivery of contracts of insurance to residents of this State or to corporations authorized to do business therein;
  b. The soliciting of applications for contracts of insurance through the use of the United States mail or any other media, method or device;
  c. The collections of premiums, membership fees, assessments or other considerations for such contracts; or
  d. The transaction of any matters prior to or subsequent to the execution of such contracts in contemplation thereof or arising out of them.

Any company violating any of the provisions of this section, by doing any of the foregoing acts or transactions while not authorized to do business within this State, shall be subject to penalty of not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000.00) for each offense; such penalty shall be payable to the Commissioner of Insurance, who shall in turn forward the same to the county or counties wherein the violation or violations occur, for the use of the public schools of such county or counties: Provided, that each day in which a violation occurs shall constitute a separate offense. The Attorney General of the State of North Carolina at the request of and upon information from the Commissioner of Insurance shall initiate a civil action in behalf of the Commissioner in any county of the State wherein a violation under this section occurs to recover the penalty provided. Service of process upon the unauthorized insurer shall be had as is provided in § 58-54.25. (1967, c. 909, s. 1.)

Editor's Note. — By virtue of Session Laws 1943, c. 170, "Commissioner of Insurance" has been substituted for "Insurance Commissioner" in the next to the last sentence of the section.

§ 58-54.23. Validity of acts or contracts of unauthorized company shall not impair obligation of contract as to the company; maintenance of suits; right to defend.—The failure of a company to obtain a certificate of authority shall not impair the validity of any acts or contracts of the company. Any person or insured holding contracts of insurance of an unauthorized insurer may bring an action in the courts of this State under the provisions of G.S. 58-153.1, known as the "Unauthorized Insurers Process Act," for the enforcement of any rights pursuant to the contract of insurance. The failure of the insurance company to obtain a certificate of authority shall not prevent such company from defending any action at law or suit in equity in any court of this State so long as the said company fully complies with the provisions of § 58-153.1 (c), but no company transacting insurance business in this State without a certificate of authority shall be permitted to maintain an action at law or in equity in any court of this State to enforce any right, claim or demand arising out of the transaction of such business until such company shall have obtained a certificate of authority. Nor shall an action at law or in equity be maintained in any court of this State by any successor or assignee of such company on any such right, claim or demand originally held by such company until a certificate of authority shall have been obtained by the company or by a company which has acquired all or substantially all of its assets. Nothing in this section shall be construed to abrogate the conditions of admission into this State nor to impair the authority of the Commissioner of Insurance with respect to the issuance of certificates of authority. The Commissioner of Insurance in considering the issuance of a certificate of authority shall take into consideration the acts or transactions which an unauthorized company has engaged in in this State prior to its application for a certificate of authority. (1967, c. 909, s. 1.)

§ 58-54.24. Commissioner empowered to enjoin unauthorized companies.—Whenever the Commissioner of Insurance, from evidence satisfactory to him, has reasonable grounds for believing that any foreign or alien company is violating or is about to violate the provisions of § 58-54.21, the Commissioner may through the Attorney General of this State cause a complaint to be filed in the Superior Court of Wake County to enjoin and restrain such company from continuing such violations or engaging therein, or doing any act in furtherance thereof. The court shall have jurisdiction of the proceedings and shall have the power to make and enter an appropriate order or judgment granting preliminary or final injunctive relief as in its discretion is proper: Provided, however, that the company alleged to be in violation shall have been served with process as is provided hereinafter. (1967, c. 909, s. 1.)

§ 58-54.25. Service of process upon unauthorized company by Commissioner of Insurance.—(a) Any act of entering into a contract of insurance as an insurer or transacting insurance business in this State, as set forth in G.S. 58-54.22 by an unauthorized, foreign or alien company, shall be equivalent to and shall constitute an appointment by such company of the Secretary of State to be its true and lawful attorney upon whom may be served all lawful process in any action or proceeding against it arising out of a violation of G.S. 58-54.21, and any of said acts shall be a signification of its agreement that any such process against it, which is so served, shall be of the same legal force and validity as if in fact served upon the company.

(b) Service of process on the Secretary of State shall be made by the sheriff delivering to and leaving with the Secretary of State duplicate copies of such process, notice or demand. Service shall be deemed complete when the Secretary of State is so served. The Secretary of State shall endorse upon both copies the time of receipt and shall forthwith send one of such copies by registered mail, with return receipt requested, to such insurer at its last known principal place of business as shown on the process, notice or demand served on the Secretary of State. The Commissioner of Insurance and the Attorney General shall see that such address is included on the process, notice or demand which is served upon the Secretary of State. A copy of the complaint or order of the clerk extending the time for filing the complaint must be mailed to the insurer with the copy of the summons. When a copy of the complaint is not mailed with the summons, the Secretary of State shall mail a copy of the complaint when it is served on him in the same manner as the copy of summons is required to be mailed.

(c) Upon the return to the Secretary of State of the requested return receipt showing delivery and acceptance of such registered mail, or upon the return of such registered mail showing refusal thereof by such foreign or alien insurer, the Secretary of State shall note thereon the date of such return to him and shall attach either the return receipt or such refused mail including the envelope, as the case may be, to the copy of the process, notice or demand theretofore retained by him and shall mail the same to the clerk of the court in which such action or proceeding is pending and in respect of which such process, notice or demand was issued. Such mailing, in addition to the return by the sheriff, shall constitute the due return required by law. The clerk of the court shall thereupon file the same as a paper in such action or proceeding.

(d) Service made under this section shall have the same legal force and validity as if the service had been made personally in this State. The refusal of any such foreign or alien insurer to accept delivery of the registered mail provided for in subsection (b) of this section or the refusal to sign the return receipt shall not affect the validity of such service; and any foreign or alien insurer refusing to accept delivery of such registered mail shall be charged with knowledge of the contents of any process, notice or demand contained therein.

(e) Whenever service of process is made upon the Secretary of State as herein provided the defendant foreign or alien insurer shall have 30 days from the date when the defendant receives or refuses to accept the registered mail containing the copy of the complaint sent as in this section provided in which to appear and answer the complaint in the action or proceeding so instituted. Entries on the defendant's return receipt or the refused registered mail shall be sufficient evidence of such date. If the date of acceptance or refusal to accept the registered mail cannot be determined from the entries on the return receipt or from notations of the postal authorities on the envelope, then the date when the defendant accepted or refused to accept the registered mail shall be deemed to be the date that the return receipt or the registered mail was received back by the Secretary of State.

(f) The court in any action or proceeding in which service is made in the manner provided in the above paragraph may, in its discretion, order such postponement as may be necessary to afford such company reasonable opportunity to defend such action or proceeding.

(g) The Secretary of State shall keep a summarized record of all processes, notices and demands served upon him under this section, and shall record therein the time of such service and his action with reference thereto.

(h) Nothing herein contained shall limit or affect the right to serve any process, notice or demand to be served upon an insurer in any other manner now or hereafter permitted by law.

(i) No judgment by default shall be entered in any such action or proceeding until the expiration of 30 days from the date of the filing of the affidavit of compliance. (1967, c. 909, s. 1.)

Editor's Note. — By virtue of Session Laws 1943, c. 170, "Commissioner of Insurance" has been substituted for "Insurance Commissioner" in subsection (b).

§ 58-54.25:1. Certain life insurance companies and contracts excepted from application of §§ 58-54.21 and 58-54.22.—The provisions of § 58-54.21 and § 58-54.22 shall not apply to a life insurance company already organized as a corporation or association and operating without profit to any private shareholder or individual, exclusively for the purpose of aiding educational or scientific institutions by providing directly from the home office of such corporation or association, without agents or representatives in this State, contracts of insurance and annuities to educational or scientific institutions organized and operated without profit to any private shareholder or individual or to individuals engaged in the service of such educational or scientific institution; nor shall the provisions of §§ 58-54.21 and 58-54.22 apply to any insurance or annuity contracts issued by such life insurance company. (1967, c. 909, s. 1.)

ARTICLE 3D.

Unauthorized Insurance by Domestic Companies.

§ 58-54.26. Purpose of article.—It is the purpose of this article to effectively control and regulate the activities of domestic insurance companies so as to prevent them from engaging in and transacting insurance business in states and jurisdictions in which they are not authorized to do a business of insurance. The General Assembly recognizes that insofar as domestic companies of this State engage in transacting insurance business in states and jurisdictions in which they are not authorized to do business that such activity subjects the domestic companies of this State to the penalties for such unlawful activities in other states and jurisdictions, and that such activities tend to substantially impair the effectiveness of the domestic companies in this State. The General Assembly also recognizes that the practices of unauthorized insurers could be largely corrected if each state would effectively regulate the activities of its domestic companies. The provisions of this article are in addition to all other statutory provisions designed to control the activities of domestic companies and nothing herein shall be construed to amend, modify or repeal the provisions of existing laws. (1967, c. 935, s. 1.)

Editor's Note.—Section 5, c. 935, Session Laws 1967, provides that the act shall be effective on and after July 1, 1967 but shall not apply to any contracts of insurance in effect before that date.

§ 58-54.27. Domestic insurers prohibited from transacting business in foreign states without authorization; exceptions.—Except as hereinafter provided, no domestic insurer organized under the laws of this State shall transact or attempt to transact or solicit business in any manner or accept risks in any jurisdiction in which such insurer is not licensed in accordance with the laws of such jurisdiction. There is excepted from the terms of this section the following acts and transactions:

(1) Contracts entered into by a domestic company insuring a risk within a foreign state or jurisdiction, where the law of the foreign state or jurisdiction permits an unauthorized insurer to so contract;

(2) Contracts entered into where the prospective insured is personally present in the state in which the insurer is authorized to transact business when he signs the application;

(3) Contracts of reinsurance between a licensed insurer of the foreign state or jurisdiction and a domestic company;

(4) The issuance of certificates under a lawfully transacted group life or

group disability policy, where the master policy was entered into in a state in which the insurer was then authorized to transact business;

(5) The renewal or continuance in force, with or without modification, of contracts otherwise lawful and which were not originally executed in violation of this section. (1967, c. 935, s. 1.)

§ 58-54.28. Domestic insurers; advertising; exceptions.—No domestic insurer shall knowingly solicit or advertise its insurance business in a state or jurisdiction in which it is not licensed as an authorzed insurer. Provided, however, that this section shall not prohibit a domestic insurer from advertising through publications, radio or television if such advertising is not expressly directed toward the residents or subjects of insurance in a foreign state or other jurisdiction. Nor shall this section apply to trade journals or directories. (1967, c. 935, s. 1.)

§ 58-54.29. Penalties provided for unauthorized acts. — Whenever any domestic insurer shall knowingly engage in the practice of soliciting, advertising or making contracts for insurance in states or jurisdictions in which it is not licensed, the North Carolina Commissioner of Insurance shall be authorized, as hereinafter provided, to issue an order requiring such company to cease and desist from engaging in such activities and, for the purposes of this section, the acts prohibited by G.S. 58-54.28 and the foregoing sections, are declared to be an unfair trade practice within the meaning of G.S. 58-54.4 and G.S. 58-54.9. Provided; whenever the Commissioner shall have reason to believe that any domestic company has been engaged or is engaging in the practice of knowingly soliciting, advertising or writing contracts of insurance on risks within a state or jurisdiction in which it is not licensed, he shall proceed to serve such company with notice of hearing and the hearing shall in all respects conform with the hearing procedure set forth in G.S. 58-54.6. Any action taken by the Commissioner of Insurance after such hearing shall be in compliance with G.S. 58-54.7, and any company aggrieved by an order of the Commissioner shall be entitled to that judicial review as is provided in G.S. 58-54.8. (1967, c. 935, s. 1.)

Editor's Note. — By virtue of Session Laws 1943, c. 170, "Commissioner of Insurance" has been substituted for "Insurance Commissioner" in the first sentence of this section.

Article 4.

Insurance Premium Financing.

§ 58-55. Definitions.

Cited in Northcutt v. Clayton, 269 N.C. 428, 152 S.E.2d 471 (1967).

§ 58-56. License required; fees.

(e) There shall be two types of licenses issued to an insurance premium finance company:

(1) An "A" type license shall be issued to insurance premium finance companies whose business of insurance premium financing is limited to the financing of insurance premiums of one insurance agent or agency and whose primary function is to finance only the insurance premium of such agent or agency. The license fee for an "A" type license shall be two hundred dollars ($200.00) for each license year or part thereof.

(2) A "B" type license shall be issued to an insurance premium finance company whose business of insurance premium financing is not limited to the financing of insurance premiums of one insurance agent or agency and whose primary function is to finance the insurance premiums of more than one insurance agent or agency. The license fee for a "B" type license shall be nine hundred fifty dollars ($950.00) for each license year or part thereof.

A branch office license may be issued for either an "A" type or "B" type license. The fee for the branch office license shall be fifty dollars ($50.00) for each license year or part thereof. The examination fee when required by this section shall be one hundred dollars ($100.00) per application. (1963, c. 1118; 1967, c. 1232, s. 1.)

Cross Reference.—As to exemption of insurance premium finance companies licensed under this article from the license tax on loan agencies or brokers, see § 105-88 (b).

Editor's Note. — The 1967 amendment, effective July 1, 1967, rewrote subsection (e).

As only subsection (e) was changed by the amendment, the rest of the section is not set out.

Fees Are Intended to Pay Expenses of Supervision.—The fees exacted of insurance premium financiers by this section and of persons engaged in business under the Consumers Finance Act by § 53-167 are intended to pay the necessary expenses of licensing, regulating, and supervising the business. Although any surplus collected under this section reverts to the general treasury of the State under § 58-61.1, this is merely an incidental budgetary provision. Northcutt v. Clayton, 269 N.C. 428, 152 S.E.2d 471 (1967).

§ **58-56.1. Exceptions to license requirements.**—(a) Any person, firm or corporation doing business under the authority of any law of this State or of the United States relating to banks, trust companies, installment paper dealers, auto finance companies, savings and loan associations, cooperative credit unions, agricultural credit corporations or associations, organized under the laws of North Carolina or any person, firm or corporation subject to the provisions of the North Carolina Consumer Finance Act and the North Carolina Motor Vehicle Dealers and Manufacturers Licensing Law, article 12, chapter 20, of the General Statutes of North Carolina are exempt from the provisions of this article.

(b) An insurance company duly licensed in this State may make an installment payment charge as set forth in the rate filings and approved by the Commissioner and are thereby exempt from the provisions of this article. Notwithstanding the exceptions set forth in subsections (a) and (b) of this section, when any person, firm or corporation shall exercise a power of attorney taken in connection with the financing of an insurance premium, such person, firm or corporation shall comply with the requirements of G.S. 58-60, as if it were an insurance premium finance company. (1963, c. 1118; 1967, c. 942, s. 1.)

Editor's Note. — The 1967 amendment added the last sentence in the section.

Section 3 of the amendatory act provides that it "shall be effective on and after July 1, 1967, and shall apply to contracts of insurance premium financing entered into on or after said date."

Those Subject to This Article Are Not Intended to Be Subject to Consumer Finance Act.—Had the legislatiure intended to subject to the provisions of the Consumer Finance Act those who make loans solely to finance insurance premiums, surely it would not have enatced this article in the first instance since it exempts from its provisions those subject to the Consumer Finance Act. The legislature did not deem it necessary for both the Commissioner of Banks and the Commissioner of Insurance to supervise an insurance premium financing company. Northcutt v. Clayton, 269 N.C. 428, 152 S.E.2d 471 (1967).

§ **58-56.2. Issuance or refusal of license; bond; duration of license; renewal; one office per license; display of license; notice of change of location.**—(a) Within sixty (60) days after the filing of an application for a license accompanied by payment of the fees for license and examination, the Commissioner shall issue the license or may refuse to issue the license and so advise the applicant. The applicant shall submit with such application any and all information which the Commissioner may require to assist him in determining the financial condition, business integrity, method of operation and protection to the public offered by the person filing such application. The Commissioner may require a bond not to exceed twenty-five thousand dollars ($25,000.00) on applications and any renewal thereof. Such license to engage in business in accordance with the provisions of this article at the location specified in the application shall be executed in duplicate by the Commissioner and he shall transmit one copy to the applicant and retain a copy on file.

(1965, c. 1039.)

Editor's Note. — The 1965 amendment added the third sentence in subsection (a). As the rest of the section was not affected by the amendment, it is not set out.

§ 58-58.1. Form, contents and execution of insurance premium finance agreements.

Cited in Northcutt v. Clayton, 269 N.C. 428, 152 S.E.2d 471 (1967).

§ 58-59. Limitations on service charges; computation; minimum charges.

(c) The service charge provided for in this section shall be computed on the principal balance of the insurance premium finance agreement from the inception date of the insurance contract, the premiums for which are advanced or to be advanced under the agreement unless otherwise provided under rules and regulations prescribed by the Commissioner, to and including the date when the final installment of the insurance premium finance agreement is payable, at a rate not exceeding ten dollars ($10.00) per one hundred dollars ($100.00) per annum; provided that when the principal balance is one hundred twenty dollars ($120.00) or less, a licensee may charge, in lieu of the charge specified above, rates not exceeding, two dollars ($2.00) for each ten dollars ($10.00) on that part of the principal balance not exceeding forty dollars ($40.00); one dollar ($1.00) for each ten dollars ($10.00) on that part of the principal balance exceeding forty dollars ($40.00) but not exceeding seventy dollars ($70.00); fifty cents (50¢) for each ten dollars ($10.00) on that part of the principal balance exceeding seventy dollars ($70.00) but not exceeding one hundred twenty dollars ($120.00). All service charges may be rounded off to the nearest dollar and are subject to a minimum charge as follows: Three dollars ($3.00) when the principal balance is less than twenty dollars ($20.00); six dollars ($6.00) when the principal balance is twenty dollars ($20.00) or more, but less than one hundred twenty dollars ($120.00); fourteen dollars ($14.00) when the principal balance is one hundred twenty dollars ($120.00) or more.

(1967, c. 824.)

Editor's Note. — The 1967 amendment substituted "may" for "are to" following "All service charges" at the beginning of the second sentence in subsection (c). As only subsection (c) was affected by the amendment, the rest of the section is not set out.

§ 58-60. Procedure for cancellation of insurance contract upon default; return of unearned premiums; collection of cash surrender value.

(1) Not less than ten (10) days' written notice be mailed to the last known address of the insured or insureds shown on the insurance premium finance agreement of the intent of the insurance premium finance company to cancel his or their insurance contract or contracts unless the defaulted installment payment is received. A notice thereof shall also be mailed to the insurance agent.

(5) Whenever an insurance contract is cancelled in accordance with this section, the insurer shall promptly return whatever gross unearned premiums are due under the contract to the insurance premium finance company effecting the cancellation for the benefit of the insured or insureds. Whenever the return premium is in excess of the amount due the insurance premium finance company by the insured under the agreement, such excess shall be remitted promptly to the order of the

insured, subject to the minimum service charge provided for in this article.

(1967, c. 825; 1969, c. 941.)

Editor's Note. — The 1967 amendment struck out "and agent" preceding "subject" near the end of the last sentence in subdivision (5).

The 1969 amendment substituted "mailed to the last known address of" for "furnished" in the first sentence of subdivision (1).

As the rest of the section was not affected by the amendments, it is not set out.

Authority to Cancel Policy and Collect Unearned Premium Is Security.—The authority given by a borrower to an insurance premium finance company to cancel the policy and collect the unearned premium upon the borrower's default, is security analogous to a chattel mortgage or a conditional sale. Northcutt v. Clayton, 269 N.C. 428, 152 S.E.2d 471 (1967).

The burden is upon the insurance company to show that all statutory requirements have been complied with, including the ten days' written notice by the premium finance company to the insured together with said notice to the insurance agent, prior to the premium finance company requesting cancellation of the policy. Grant v. State Farm Mut. Auto. Ins. Co., 1 N.C. App. 76, 159 S.E.2d 368 (1968).

To avoid liability to a third-party beneficiary of an assigned risk automobile insurance policy, the insurer must allege and prove cancellation and termination of the policy in accordance with the applicable statutes. Grant v. State Farm Mut. Auto. Ins. Co., 1 N.C. App. 76, 159 S.E.2d 368 (1968).

Stated in Hayes v. Hartford Accident & Indem. Co., 274 N.C. 73, 161 S.E.2d 552 (1968).

§ **58-61. Violations; penalties.**—Any person who shall engage in the business referred to in this article without first receiving a license, or who shall fail to secure a renewal of his license upon the expiration of the license year, or shall engage in the business herein referred to after the license has been suspended or revoked as herein provided, or who shall fail or refuse to furnish the information required of the Commissioner, or who shall willfully and knowingly enter false information on an insurance premium finance agreement, or who shall fail to observe the rules and regulations made by the Commissioner pursuant to this article, shall be deemed guilty of a misdemeanor and upon conviction shall pay a fine of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00), or be imprisoned, or both, at the discretion of the court. (1963, c. 1118; 1965, c. 1040.)

Editor's Note. — The 1965 amendment inserted "or who shall willfully and knowingly enter false information on an insurance premium finance agreement" near the middle of this section.

§ **58-61.1. Disposition of fees.**

Cited in Northcutt v. Clayton, 269 N.C. 428, 152 S.E.2d 471 (1967).

ARTICLE 4A.

Insurance Business Through Credit Cards Prohibited.

§ **58-61.2. Solicitation, negotiation or payment of premiums on insurance policies through credit card facilities prohibited; exceptions.**—Except as otherwise provided herein, no authorized insurer and no representative of such insurer or insurance broker shall employ or avail itself of the facilities ot any person, firm or corporation engaged in the credit card business to solicit or negotiate any contract of insurance upon any life or risk within the State of North Carolina, or accept the payment of premiums upon a policy of insurance, insuring any life or risk in the State of North Carolina, through the use of any credit card facility. Except as otherwise provided herein, no person, firm or corporation engaged in the business of extending credit through a credit card system shall, on behalf of any insurer, its representative of any insurance broker, utilize his or its credit card facilities to solicit for, negotiate contracts of insurance or accept the payment of premiums upon any contract of insurance from credit card holders or prospective credit card holders who reside in this State. The solicitation for and the negotiation of policies of insurance prohibited by this section shall include, but shall not be limited to, the transmittal of applications for insurance, premium rate schedules, circulars, letters or sales literature pertaining to insurance to credit card holders or prospective credit card holders who reside in this State. Credit card business as used in this section shall mean the business of extending credit to persons who are holders of credit cards issued by the credit card facility or organization entitling the holder to pay charges for purchases or other transactions through the use of credit card facilities.

Nothing in this article shall prohibit an authorized insurer, the representative of such insurer, or an insurance broker from accepting payment of an insurance premium through a credit card facility provided and operated by a banking corporation principally domiciled in this State and doing business under the laws of the State of North Carolina or the United States. No such bank shall be prohibited from making such credit card facility available for this limited purpose, provided, that all records relating to the payment of insurance premiums through such credit card facility are maintained within the State of North Carolina.

Nothing in this article shall prohibit an authorized insurer, the representative of such insurer, or an insurance broker from notifying its or his customers or prospective customers through means other than credit card facilities of the availability of credit card facilities for the payment of insurance premiums. (1967, c. 1245.)

ARTICLE 5.

License Fees and Taxes.

§ 58-62. Commissioner to report and pay monthly.

Payment of Penalty Imposed by § 58-44.6.—By clear implication of this section and § 58-63, the amount of any monetary civil penalty imposed and collected as authorized by § 58-44.6 should be paid over to the State Treasurer. State ex rel. Lanier v. Vines, 1 N.C. App. 208, 161 S.E.2d 35 (1968).

§ 58-63. Schedule of fees and charges.

Payment of Penalty Imposed by § 58-44.6.—By clear implication of this section and § 58-62, the amount of any monetary civil penalty imposed and collected as authorized by § 58-44.6 should be paid over to the State Treasurer. State ex rel. Lanier v. Vines, 1 N.C. App. 208, 161 S.E.2d 35 1968).

SUBCHAPTER II. INSURANCE COMPANIES.

ARTICLE 6.

General Domestic Companies.

§ 58-72. Kinds of insurance authorized.

(17) "Credit insurance," meaning indemnifying merchants or other persons extending credit against loss or damage resulting from the nonpayment of debts owed to them; and including the incidental power to acquire and dispose of debts so insured, and to collect any debts owed to such insurer or to any person so insured by him including without limiting the foregoing, mortgage guaranty insurance which is insurance against financial loss by reason of the nonpayment of principal, interest and other sums agreed to be paid under the terms of any note or bond, or other evidence of indebtedness secured by a security interest, mortgage, deed of trust, or other instrument constituting a lien or charge on real

estate, or on such personal property as the Commissioner may from time to time approve.

(1967, c. 624, s. 1.)

Amendment Effective July 1, 1970.—Session Laws 1969, c. 616, s. 1, effective July 1, 1970, will insert "whether in fixed or variable dollar amounts, or both" near the beginning of subdivision (2).

Editor's Note.—

The 1967 amendment added at the end of subdivision (17) the provision as to mortgage guaranty insurance.

As the rest of the section was not changed by the amendment, only subdivision (17) is set out.

§ 58-77. Amount of capital and/or surplus required; impairment of capital or surplus.

(1) Stock Life Insurance Companies.

a. A stock corporation may be organized in the manner prescribed in this chapter and licensed to do the business of life insurance, only when it shall have paid-in capital of at least three hundred thousand dollars ($300,000.00) and a paid-in initial surplus of an amount at least equal to such capital, and it may in addition do the kind of business specified in subdivision (2) of G.S. 58-72, without having additional capital or surplus. Every such company shall at all times thereafter maintain a minimum capital of not less than three hundred thousand dollars ($300,000.00) and a minimum surplus of at least seventy-five thousand dollars ($75,000.00). Provided that, any such corporation may do either or both of the kinds of insurance authorized for stock, accident and health insurance companies, as set out in paragraphs a and b of subdivision (3) of G.S. 58-72 where its charter so permits, when and if it meets all additional requirements as to capital and surplus as fixed in subdivision (2) hereof as applicable and maintains the same as required therein.

b. If the Commissioner, after such investigation as he may deem it expedient to make, finds that a corporation may be organized to do the business of life insurance, or the writing of annuities or both, that its operations are restricted solely to one state, and that the organization of such corporation is in the public interest, he may permit the organization of a stock corporation to do on such restricted plan either or both of the kinds of business specified in subdivisions (1) and (2) of G.S. 58-72, with the minimum paid-in capital and a minimum paid-in surplus in an amount to be prescribed by him, but in no event to be less than a paid-in capital of two hundred thousand dollars ($200,000.00) and a paid-in surplus of two hundred thousand dollars ($200,000.00). Every such company shall at all times thereafter maintain such prescribed minimum capital and a minimum surplus of at least fifty thousand dollars ($50,000.00.)

(9) Any domestic, foreign or alien company licensed to do business in North Carolina prior to July 1, 1965, shall be permitted to continue to do the same kinds of business which it was authorized to do on such date without being required to increase its capital and/or surplus, provided, however, such insurers shall increase the capital and surplus requirements to the amounts set forth herein on or before July 1, 1971, but the requirements of this section as to capital and surplus shall apply to such companies as a prerequisite to writing additional lines of business.

(1965, c. 947; 1967, c. 300.)

Editor's Note.—

The 1965 amendment substituted "the kind of business specified in subdivision (2) of G.S. 58-72" for "any one or more of the kinds of business specified in subdivisions (2) and (3) of G.S. 58-72" near the end of the first sentence of paragraph a of subdivision (1), added the last sentence of that paragraph, and substituted "July 1, 1965" for "July 1, 1963" near the beginning of subdivision (9).

The 1967 amendment substituted "July 1, 1971" for "July 1, 1969" in subdivision (9).

As the rest of the section was not affected by the amendments, it is not set out.

§ **58-79. Investments; life.**—(a) Investments Specified.—Every domestic stock and mutual life insurance company must have and continually keep to the extent of an amount equal to its entire reserves, as hereinafter defined, and entire capital, if any, and minimum required surplus, invested in:

(1) Coin or currency of the United States of America, on hand or on deposit in a national or state bank or trust company or invested in the shares of any building and loan or savings and loan association, or invested in the shares of any federal savings and loan association.

(2) Interest-bearing bonds, notes, certificates of indebtedness, bills or other direct interest-bearing obligations of the United States of America or of the Dominion of Canada or other interest-bearing obligations fully guaranteed both as to principal and interest by the United States of America, or by the Dominion of Canada.

(3) Interest-bearing bonds of any state, District of Columbia, territory or possession of the United States of America, or of any province of the Dominion of Canada, or of any county, or incorporated city of any state, District of Columbia, territory or possession of the United States of America.

(4) Interest-bearing bonds of any commission, authority or political subdivision having legal authority to issue the same of any state, District of Columbia, territory or possession of the United States of America or of any county or incorporated city of any state, District of Columbia, territory or possession of the United States of America.

(5) Federal farm loan bonds issued by federal land banks organized under the provisions of the act of Congress known as the Federal Farm Loan Act. Interest-bearing bonds, notes or other interest-bearing obligations of any solvent corporation organized under the laws of the United States of America or of the Dominion of Canada, or under the laws of any state, District of Columbia, territory or possession of the United States of America, or obligations issued, assumed or guaranteed by the International Bank for Reconstruction and Development. Equipment trust obligations or certificates or other secured instruments evidencing an interest in transportation equipment wholly or in part within the United States of America and a right to receive determined portions of rental, purchases or other fixed obligatory payments for the use or purchase of such transportation equipment.

(6) Dividend paying stocks or shares of any corporation created or existing under the laws of the United States of America or of any state, District of Columbia, territory or possession of the United States of America; notwithstanding any provisions in this section to the contrary no company may invest more than ten percent (10%) of its total admitted assets in common stocks; and further provided, that no company may invest more than three percent (3%) of its admitted assets in the stock or shares of any one corporation, and provided further, except as the Commissioner shall permit, that such investment in any one corporation not engaged solely in the business of insurance shall not result in the acquisition of more than 20% of the outstanding voting stock or shares of such corporation. The restrictions in this section do not apply to shares of building and loan or savings and loan associations or federal savings and loan associations.

(7) Loans secured by first mortgages, or deeds of trust, on unencumbered fee simple or improved leasehold real estate in the District of Columbia or in any state, territory or possession of the United States of America, to an amount not exceeding seventy-five percent (75%) of the fair market value of such fee simple or improved leasehold real estate. No loan may be made on leasehold real estate unless the lease has at least thirty years to run before its termination and the loan matures at least twenty years before expiration of the lease. Whenever such loans are made upon fee simple, or improved leasehold real estate which is improved by a building or buildings, the said improvements shall be insured against loss by fire, and the fire insurance policies shall contain a standard mortgage clause and shall be delivered to the mortgagee as additional security for the said loan.

Loans secured by first mortgages which the Federal Housing Administrator has insured or has made a commitment to insure, or invested in mortgage notes or bonds so insured, and neither the limitations of this section nor any other law of this State requiring security upon which loans shall be made, or prescribing the nature, amount or forms of such security, or limiting the interest rates upon loans, shall be deemed to apply to such insured mortgage loans.

Loans secured by first mortgages, or deeds of trust, on unencumbered fee simple real estate in connection with which the Veterans Administration of the United States has guaranteed, or has made a commitment to guarantee, a portion of the loan pursuant to the Servicemen's Readjustment Act of 1944, and amendments thereto, provided the amount of any such loan, less the portion thereof guaranteed by said Veterans Administration, shall not exceed seventy-five percent (75%) of the fair market value of such real estate.

In all investments made upon mortgages, the evidence of the debt, if any, shall accompany the mortgage or deed of trust.

(8) Ground rents in the District of Columbia or any state of the United States of America, provided, that in the case of unexpired redeemable ground rents the premiums paid, if any, shall be amortized over the period between date of acquisition and earliest redemption date or charged off at any time prior to redemption date; and in the case of expired redeemable ground rents the premium paid, if any, shall be charged off at the time of acquisition. Redeemable ground rents purchased at a discount shall be carried at an amount not greater than the cost of acquisition.

(9) Collateral loans secured by pledge of any security named in subdivisions (1), (2), (3), (4), (5), (6), (7) and (8) of this subsection; provided that the current market value of such pledged securities shall be at all times during the continuance of such loans at least twenty-five percent (25%) more than the unpaid balance of the amount loaned on them.

(10) Loans upon the policies of the company; provided that the total indebtedness against any policy shall not be greater than the loan value of such policy.

(11) No domestic company may directly or indirectly acquire or hold real property except as follows:

a. Such land and buildings thereon in which it has its principal office and such real estate as shall be requisite for the convenient transaction of its own business; the amount invested in such real property shall not exceed ten per centum of the investing company's admitted assets, but the Commissioner may grant permission to the company to invest in real property for such purpose in such increased amount as he may deem proper upon a hearing held before him.

b. Property mortgaged to it in good faith as security for loans previously contracted for money due.

c. Property conveyed to it in satisfaction of debts previously contracted in the course of its dealings, or purchased at sales upon judgments, decrees, or mortgages obtained or made for such debts.

d. Additional real property and equipment incident to real property, if necessary or convenient for the purpose of enhancing the sale value of real property previously acquired or held by it under paragraphs b and c of this subdivision and subject to the prior written approval of the Commissioner.

e. 1. Real estate acquired for the purpose of leasing the same to any person, firm, or corporation, or real estate already leased under the following conditions:

I. A. Where there has already been erected on said property a building or other improvements satisfactory to the purchaser, or

B. Where the lessee shall at its own cost erect thereon, free of liens, a building or other improvements satisfactory to the lessor, or

C. Where the lessor under the terms and conditions of a lease executed and entered into simultaneously with the purchase of the property agrees to erect a building or other improvements on said property;

II. That the said improvements shall remain on the said property during the period of the lease, and in cases where the said improvements are put upon said property at the cost of the lessee the said improvements at the termination of the lease shall vest, free of liens, in the owner of the real estate;

III. That during the term of the lease the tenant shall keep and maintain the said improvements in good repair. Real estate acquired pursuant to the provisions of this subparagraph (a) (11) e 1 shall not be treated as an admitted asset unless and until the improvements herein required shall have been constructed and the lease agreement entered into in accordance with the terms of this subparagraph, nor shall real estate acquired pursuant to this subparagraph (a) (11) e 1 be treated as an admitted asset in an amount exceeding the amount actually invested reduced each year by at least two percent (2%) of the investment allocable to the improvements on such real estate. The total investments of any company under this subparagraph (a) (11) e 1 shall not exceed six percent of its assets, nor more than fifty percent (50%) of its capital and surplus whichever is less.

2. Subject to approval of the Commissioner, real estate for recreation, hospitalization, convalescent and retirement

purposes of its employees. Such investment under this subparagraph (a) (11) e 2 shall not exceed five percent (5%) of the company's surplus.

3. Subject to the approval of the Commissioner, real estate for public or private housing developments. Such investment under this subparagraph (a) (11) e 3 shall be subject to and not exceed the limitation provided for in the last sentence of subparagraph (a) (11) e 1 III hereof.
4. No investment shall be made by any company pursuant to this paragraph e which will cause such company's investment in all real property owned or held by it directly or indirectly to exceed ten percent (10%) of its assets.

f. It is unlawful for any such incorporated company to purchase or hold real estate in any other case or for any other purpose. Real estate acquired under paragraph (a) (11) a and subparagraph (a) (11) e 2 of this section which has ceased to be used or to be necessary for the purposes stated therein shall be sold within five years thereafter, unless the company procures a certificate from the Commissioner that the interest of the company will materially suffer by a forced sale of such real estate in which event the time for the sale may be extended to such a time as the Commissioner may direct in the certificate. Any real estate acquired under paragraphs b, c, and d of this subdivision (11) shall be sold within five years after the company has acquired title thereto; provided, that the Commissioner may in his discretion extend the five-year period as provided hereinabove. Any real estate acquired under subparagraph (a) (11) e 1 of this section shall within five years after the termination or expiration of such lease be sold or released for an additional term pursuant to the provisions of subparagraph (a) (11) e 1; provided, that the Commissioner may in his discretion extend the five-year period as provided hereinabove. Nothing contained herein prevents any insurance company from improving or conveying its real estate, notwithstanding the lapse of five years without having procured such certificate from the Commissioner.

(12) Electronic and mechanical machines constituting a data processing and accounting system if the cost of such system is at least twenty-five thousand dollars ($25,000.00), but not more than two percent (2%) of its admitted assets, which cost shall be amortized in full over a period not to exceed ten (10) calendar years.

(13) Interest, rents or other fixed income due and accrued on any of the investments named in subdivisions (1), (2), (3), (4), (5), (7), (8), (9), (10) and (11) of this subsection pursuant to regulations promulgated by the Commissioner.

(14) Notwithstanding any expressed or implied prohibitions, a company may, after the date of the enactment of this subdivision, invest in investments which do not otherwise qualify under any other provision of this subsection; provided, however, that the investments authorized by this subdivision shall not exceed the lesser of (i) five percent (5%) of its admitted assets or (ii) the amount by which total admitted assets exceed total liabilities (except capital) plus six hundred thousand dollars ($600,000) as shown on its last annual statement preceding the date of the acquisition of such investment as filed with the Commissioner of Insurance.

(15) To the extent necessary to satisfy the investment requirements as to reserves and entire capital, if any, and minimum required surplus, no company shall make any investment in or loan on any of the securities mentioned in this section, which are in default as to principal or interest or as to which the dividend on the last preceding dividend date has been passed.

(1967, c. 842; 1969, c. 1199.)

Editor's Note.—

The 1967 amendment inserted "common" before "stocks" near the middle of subdivision (6), substituted, at the end of the second sentence of subparagraph (11) e 1 III, "by at least two percent (2%) of the investment allocable to the improvements on such real estate" for "by equal decrements sufficient to write off at least seventy-five percent (75%) of the investment at the normal termination of the lease or at the end of thirty years should the term of the lease be for a longer period," inserted present subdivision (14) and renumbered former subdivision (14) as (15), all in subsection (a).

The 1969 amendment deleted the former second paragraph of subdivision (14) of subsection (a), relating to investment in real property.

As the rest of the section was not changed by the amendments, only subsection (a) is set out.

§ 58-79.1. Investments; fire, casualty and miscellaneous.

(c) Classes of Reserve Investments.—The reserve investments of every domestic stock and mutual insurance company, other than a life insurance company or a fraternal benefit association, shall consist of the following:

(1) Bonds or other evidences of indebtedness, not in default as to principal or interest, which are valid and legally authorized obligations issued, assumed or guaranteed by the United States of America or by any state thereof or by any territory or possession of the United States or by the District of Columbia, or by any county, city, town, village, municipality or district therein or by any political subdivision thereof or by any civil division or public instrumentality of one or more of the foregoing, if by statutory or other legal requirements applicable thereto, such obligations are payable, as to both principal and interest, from taxes levied or by such law required to be levied upon all taxable property or all taxable income within the jurisdiction of such governmental unit or from adequate special revenues pledged or otherwise appropriated or by such law required to be provided for the purpose of such payment, but not including any obligations payable solely out of special assessments on properties benefited by local improvements.

(2) Obligations, other than those eligible for investment under subdivision (6), issued, assumed, or guaranteed by any solvent institution created or existing under the laws of the United States or of any state, district or territory thereof, which are not in default as to principal or interest, and which are qualified under any of the following paragraphs:

a. Obligations which are secured by adequate collateral security and bear fixed interest and if during each of any three, including the last two, of the five fiscal years next preceding the date of acquisition by such insurer, the net earnings of the issuing, assuming or guaranteeing institution available for its fixed charges, as hereinafter defined, shall have been not less than one and one-quarter times the total of its fixed charges for such year, or obligations which, at the date of acquisition by such insurer, are adequately secured and have investment qualities and characteristics wherein the speculative elements are not predominant. In determining the adequacy of collateral security, not more than one third of the total value of such required collateral shall consist of stock other than stock meeting the requirements of subsection (c).

b. Fixed interest-bearing obligations, other than those described in paragraph a if the net earnings of the issuing, assuming or guaranteeing institution available for its fixed charges for a period of five fiscal years next preceding the date of acquisition by such insurer shall have averaged per year not less than one and one-half times its average annual fixed charges applicable to such period and if during the last year of such period such net earnings shall have been not less than one and one-half times its fixed charges for such year.

c. Adjustment, income or other contingent interest obligations if the net earnings of the issuing, assuming or guaranteeing institution available for its fixed charges for a period of five fiscal years next preceding the date of acquisition by such insurer shall have averaged per year not less than one and one-half times the sum of its average annual fixed charges and its average annual maximum contingent interest applicable to such period and if during each of the last two years of such period such net earnings shall have been not less than one and one-half times the sum of its fixed charges and maximum contingent interest for such year.

Within the meaning of this section the term "obligation" shall include bonds, debentures, notes or other evidences of indebtedness; the term "institution" shall include a corporation, a joint stock association and a business trust. The term "net earnings available for fixed charges" shall mean net income after deducting operating and maintenance expenses, taxes other than federal and State income taxes, depreciation and depletion, but excluding extraordinary nonrecurring items of income or expense appearing in the regular financial statements of the issuing, assuming or guaranteeing institutions. The term "fixed charges" shall include interest on funded and unfunded debt amortization of debt discount, and rentals for leased properties. If net earnings are determined in reliance upon consolidated earnings statements of parent and subsidiary institutions, such net earnings shall be determined after provision for income taxes of subsidiaries and after proper allowance for minority stock interest, if any; and the required coverage of fixed charges shall be computed on a basis including fixed charges and preferred dividends of subsidiaries other than those payable by such subsidiaries to the parent corporation or to any other of such subsidiaries, except that if the minority common stock interest in the subsidiary corporation is substantial, the fixed charges and preferred dividends may be apportioned in accordance with regulations prescribed by the Commissioner.

In applying the earnings tests under this section to any issuing, assuming or guaranteeing institution, whether or not in legal existence during the whole of such five years next preceding the date of investment by such insurer, which has at any time or times during such five-year period acquired the assets of any other institution or institutions by purchase, merger, consolidation or otherwise, substantially as an entirety, or has been reorganized pursuant to the bankruptcy law, the earnings of such other predecessor or constituent institutions, or of the institution so reorganized, available for interest and dividends for such portion of such period as shall have preceded such acquisition, or such reorganization may be included in the earnings of such issuing, assuming or guaranteeing institution for such portion of such period as may be determined in accordance with adjusted or pro forma consolidated earnings statements covering such portion of such period and giving effect to all stocks or shares outstanding and all fixed charges existing, immediately after such acquisition, or such reorganization.

(3) Preferred or guaranteed stocks or shares of any solvent institution, created or existing under the laws of the United States or of any state, district or territory thereof, if all of the prior obligations, and prior preferred stocks, if any, of such institution at the date of acquisition by such insurer are eligible as investments under this section; and if qualified under paragraph a or paragraph b following:

a. Preferred stocks or shares shall be deemed qualified if both of the following requirements are met:

1. The net earnings of such institution available for its fixed charges for a period of five fiscal years next preceding the date of acquisition by such insurer shall have averaged per year not less than one and one-half times the sum of its average annual fixed charges, if any, its average annual maximum contingent interest if any, and its average annual preferred dividend requirements applicable to such period; and

2. During each of the last two years of such period such net earnings shall have been not less than one and one-half times the sum of its fixed charges, contingent interest and preferred dividend requirements for such year. The term "preferred dividend requirements" shall be deemed to mean cumulative or noncumulative dividends whether paid or not.

b. Guaranteed stocks or shares shall be deemed qualified if the assuming or guaranteeing institution meets the requirements of paragraph b of subdivision (2) of subsection (c) construed so as to include as a fixed charge the amount of guaranteed dividends of such issue or the rental covering the guarantee of such dividends.

(4) a. Certificates, notes or other obligations issued by trustees or receivers of any institution created or existing under the laws of the United States or of any state, district or territory thereof, which, or the assets of which, are being administered under the direction of any court having jurisdiction, if such obligation is adequately secured as to principal and interest.

b. Equipment trust obligations or certificates which are adequately secured or other adequately secured instruments evidencing an interest in transportation equipment wholly or in part within the United States and a right to receive determined portions of rental, purchase or other fixed obligatory payments for the use or purchase of such transportation equipment.

(5) Bank and banker's acceptances and other bills of exchange of the kind and maturities made eligible, pursuant to law, for purchase in the open market by federal reserve banks.

(6) a. Bonds or evidences of indebtedness other than those described in subdivision (2) of subsection (c) which are secured by first mortgages or deeds of trust upon unencumbered fee simple or improved leasehold real property located in the United States. Real property shall not be deemed to be encumbered within the meaning of this section, by reason of the existence of instruments reserving mineral, oil or timber rights, rights-of-way, sewer rights, rights in walls, nor by reason of any liens

for taxes or assessments not yet due, nor by reason of building restrictions or other restrictive covenants, nor when such real property is subject to lease under which rents or profits are reserved to the owner, if in any event the security for such loan is a first lien upon such real property and if there is no condition or right of reentry or forfeiture, under which such lien can be cut off, subordinated or otherwise disturbed. No such mortgage loan or loans made or acquired by any insurer on any one property shall, at the time of investment by the insurer, exceed two thirds of the value of the real property securing the same. No such mortgage loan or loans shall be made or acquired by an insurer except after an appraisal made by an appraiser for the purpose of such investment. No such mortgage loan made or acquired by an insurer which is a participation or a part of a series or issue secured by the same mortgage or deed of trust shall be a lawful investment under this paragraph unless the entire series or issue which is secured by the same mortgage or deed of trust is held by such insurer or unless the insurer holds a senior participation in such mortgage or deed of trust giving it substantially the rights of a first mortgagee. Except as otherwise provided in this section, no domestic stock or mutual insurance company, other than a life insurance company or a fraternal benefit association, shall invest in or loan upon the security of any one property more than twenty-five thousand dollars or more than two per centum of its total admitted assets, whichever is the greater. In no event shall the total investments of any such insurer in the kinds permitted under this subdivision exceed forty per centum of its total admitted assets.

b. Purchase money mortgages or like securities received by it upon the sale or exchange of real property acquired pursuant to subdivision (8) of this subsection (c).

c. Bonds or notes secured by mortgage or trust deed guaranteed or insured by the Federal Housing Administration under the terms of an act of Congress of the United States of June twenty-seventh, nineteen hundred thirty-four, entitled the "National Housing Act," as heretofore or hereafter amended.

(7) Ground rents in the District of Columbia or any state of the United States of America, provided, that in the case of unexpired redeemable ground rents the premium paid, if any, shall be amortized over the period between date of acquisition and redemption date; and in the case of expired redeemable ground rents the premium paid, if any, shall be charged off at the time of acquisition. Redeemable ground rents purchased at a discount shall be carried at an amount not greater than the cost of acquisition.

(8) Real estate only if acquired or used for the following purposes in the following manner:

a. The land and the building thereon in which it has its principal office or offices.

b. Such as shall be requisite for its convenient accommodation in the transaction of its business.

c. Such as shall have been acquired in satisfaction of loans, mortgages, liens, judgments, decrees or other debts previously owing to such insurer in the course of its business or in connection with the default in payment of a loan insured under any mortgage guaranty policy of credit insurance.

d. Such as shall have been acquired in part payment of the consideration on the sale of real property owned by it, if each such transaction shall have effected a net reduction in the company's investment in real property.

e. Additional real property and equipment incident to real property, if necessary or convenient for the purpose of enhancing the sale value of real property previously acquired or held by it pursuant to the provisions of paragraph c or d of this subdivision (8).

All real property acquired pursuant to paragraphs a and b of this subdivision shall be disposed of within five years after it shall have ceased to be necessary for the convenient accommodation of such insurer in the transaction of its business, and all real property acquired pursuant to paragraphs c, d and e of this subdivision shall be disposed of within five years after the date of acquisition, unless in either case the Commissioner shall certify that the interests of the insurer will suffer materially by the forced sale thereof, in which event the time for disposal of such real property may be extended for such time as the Commissioner shall prescribe in such certificate. No real property shall be acquired by any domestic stock or mutual insurance company other than a life insurance company or a fraternal benefit association, pursuant to paragraphs a, b, d or e of this subdivision (8), except with the approval of the Commissioner.

(9) a. Any domestic stock or mutual insurance company, other than a life insurance company or a fraternal benefit association, may invest in, or otherwise acquire or loan upon, bonds, notes or other evidences of indebtedness which are valid and legally authorized obligations issued, assumed or guaranteed by the Dominion of Canada or any province thereof and which are not in default as to principal or interest; but the aggregate amount of such investments which are held at any time by any such insurer, together with all Canadian investments held by it pursuant to the following paragraph b shall not exceed ten percent of its total admitted assets, except where a greater amount is permitted pursuant to the following paragraph b, in which case the provisions of this subdivision shall not be applicable.

b. Any domestic stock or mutual insurance company, other than a life insurance company or a fraternal benefit association, which is authorized to do business in a foreign country or possession of the United States or which has outstanding insurance or reinsurance contracts on risks located in a foreign country or possession of the United States, may invest in, or otherwise acquire or loan upon securities and investments in such foreign country or possession which are substantially of the same kinds, classes and investment grades as those eligible for investment under the foregoing subdivisions of this subsection; but the aggregate amount of such investments in a foreign country or a possession of the United States and of cash in the currency of such country or possession which is at any time held by such insurer shall not, except as provided in the next preceding paragraph a, exceed one and one-half times the amount of its reserves and other obligations under such contracts or the amount which such insurer is required by law to invest in such country or possession, whichever shall be greater.

(10) Stock and debentures, or either, of any housing company organized under the public housing law of this State, to the extent and upon

such conditions as may be authorized by the Commissioner, provided all of the stock of such housing company has been or is to be originally issued to one or more insurance companies.

(e) Limitation of Investments.—Except as more specifically provided in this section, no domestic stock or mutual insurance company, other than a life insurance company or fraternal benefit association, shall have more than ten percent of its total admitted assets invested in, or loaned upon the securities of any one institution; but this restriction shall not apply to the classes of governmental obligations (including those eligible under paragraph c, subdivision (6) of subsection (c)) eligible for minimum capital investments of such insurer nor to investments in stocks of other insurance companies. No domestic stock or mutual insurance company, other than a life insurance company or fraternal benefit association shall hereafter acquire any real property of the kind or kinds specified in paragraphs a and b of subdivision (8) of subsection (c), if the value of such real property, together with the value of all such real property then held by it, exceeds ten per centum of its total admitted assets except as more specifically provided in this section.

(h) Valuation of Investments.

(1) The investments of every stock and mutual insurance company, other than a life insurance company or a fraternal benefit association, authorized to do business in this State, except securities subject to amortization and except as otherwise provided in this section, shall be valued, in the discretion of the Commissioner, at their market value, or at their appraised value, or at prices determined by him as representing their fair market value. If the Commissioner finds that in view of the character of investments of any such insurer authorized to do business in this State it would be prudent for such insurer to establish a special reserve for possible losses or fluctuations in the values of its investments, he may require such insurer to establish such reserve, reasonable in amount, and may require that such reserve be maintained and reported in any statement or report of the financial condition of such insurer. The Commissioner may, in connection with any examination or required financial statement of an authorized insurer require such insurer to furnish him a complete financial statement and audited report of the financial condition of any corporation of which the securities are owned wholly or partly by such insurer and may cause an examination to be made of any subsidiary or affiliate of such insurer.

(2) The stock of an insurance company shall be valued at its book value as shown by its last annual statement or the last report on examination, whichever is more recent. The book value of a share of common stock of an insurance company shall be ascertained by dividing (i) the amount of its capital and surplus less the value of all of its preferred stock, if any, outstanding, by (ii) the number of shares of its common stock issued and outstanding. Notwithstanding the foregoing provisions, an insurer may, at its option, value its holdings of stock in a subsidiary insurance company in an amount not less than acquisition cost if such acquisition cost is less than the value determined as hereinbefore provided.

(3) Real estate acquired by foreclosure or by deed in lieu thereof, or in connection with the default in payment of a loan insured under any mortgage guaranty policy of credit insurance, in the absence of a recent appraisal deemed by the Commissioner to be reliable, shall not be valued at an amount greater than the unpaid principal of the defaulted loan at the date of such foreclosure or deed, together with any taxes and expenses paid or incurred by such insurer at such time in connec-

tion with such acquisition (but not including any uncollected interest on such loan); and the cost of additions or improvements thereafter made by such insurer and any amount or amounts thereafter paid by such insurer on any assessments levied for improvements in connection with the property; provided, that the value of any property conveyed to any mortgage guaranty insurance company in satisfaction of debts or guarantees previously contracted in the course of its dealings, or purchased at sales upon judgments, decrees or mortgages obtained or made for such debts or guaranties, or acquired upon tender of the named insured, whether such property be held by it directly or indirectly, together with the value of all such real property then held by it shall not exceed thirty percent (30%) of its total admitted assets; provided, however, that the Commissioner of Insurance shall have authority from time to time by regulation to fix a lesser percentage of admitted assets than provided by this statute, and when so fixed, the property so held by such company, directly or indirectly, shall not exceed such percentage of its admitted assets.

(4) Purchase money mortgages shall be valued in an amount not exceeding the acquisition cost of such real property or ninety percent of the value of such real property, whichever is less.

(5) The stock of a subsidiary of an insurer shall be valued on the basis of the value of only such of the assets of such subsidiary as would constitute lawful investments for the insurer if acquired or held directly by the insurer.

(1967, c. 624, ss. 2-4.)

Editor's Note.—

The 1967 amendment added, at the end of paragraph c of subdivision (8) of subsection (c), "or in connection with the default in payment of a loan insured under any mortgage guaranty policy of credit insurance," added, at the end of subsection (e), "except as more specifically provided in this section," inserted, near the beginning of subdivision (3) of subsection (h), "or in connection with the default in payment of a loan insured under any mortgage guaranty policy of credit insurance" and added the proviso at the end of subdivision (3) of subsection (h).

As the rest of the section was not changed by the amendment, only subsections (c), (e) and (h) are set out.

§ 58-79.2. Segregation of certain accounts by domestic life insurance companies. — A domestic life insurance company may allocate to one or more separate accounts, in accordance with the terms of one or more written agreements, any amounts which are paid to such company in connection with a pension, retirement, or profit-sharing plan and which are to be applied to purchase retirement benefits and other benefits incidental thereto under such company's insurance or annuity policies or contracts; provided that, no such separate account may be created, and no funds in any such separate account may be used, to purchase any insurance or annuity policy or contract which provides for or permits retirement payments in other than prescribed, fixed and specific dollar amounts, except that nothing herein shall prevent or render unlawful the voluntary payment by an insurance company of excess or nonguaranteed interest with respect to any insurance or annuity policy or contract; provided further, no payment or contribution by any employee as such shall be allocated to any separate account. The income, if any, and any gains or losses, realized or unrealized, on each such account shall be credited to or charged against the amounts allocated to such account in accordance with the written agreement or agreements applicable to such account, without regard to other income, gains, or losses of the company. The amounts allocated to such accounts and the accumulations thereon shall be owned by the company, and the company shall not be, or hold itself out to be, a trustee in respect of such amounts. Amounts received by the company pursuant to one or more such agreements may be maintained in one or more separate accounts.

The amounts allocated to any such account and the accumulations thereon may be invested and reinvested by the company in any of the investments specified in the written agreement or agreements applicable to such account; provided, that not more than five per cent (5%) of the amounts allocated to any such account and the accumulations thereon shall be invested in the stocks, notes, debentures, bonds, or other securities of any one corporation or issuer if, at the time the investment is made, such account and accumulations thereon exceed two hundred fifty thousand dollars ($250,000.00), and no security of a subsidiary or affiliate of such insurance company shall be allocated to any such account. No investment in any such account shall be transferred to any other account or to the general assets of the company and no investment among the general assets of the company shall be transferred to any such account.

The investment limitations applicable to life insurance companies and set forth in G.S. 58-79 shall not be applicable to such separate accounts as are herein authorized. (1965, c. 166.)

Amendment Effective July 1, 1970.—Session Laws 1969, c. 616, s. 2, effective July 1, 1970, rewrites this section so that it will read as follows:

§ 58-79.2. Establishment of separate accounts by life insurance companies.—(a) When used in this section, "variable annuity contract" shall mean any individual or group contract issued by an insurance company providing for annuity benefits or contractual payments or values which vary so as to reflect investment results of any segregated portfolio of investments or of a designated separate account or accounts in which amounts received or retained in connection with any of such contracts have been placed.

(b) Any domestic life insurance company may, pursuant to resolution of its board of directors, establish one or more separate accounts and may allocate to such account or accounts amounts received or retained in connection with variable annuity contracts.

(c) In addition to the amounts allocated under subsection (b), such company may allocate from its general accounts to such separate account or accounts additional amounts, which may include an initial allocation to establish such account; provided, that the aggregate amount so allocated shall not exceed one per centum of its admitted assets as of the preceding December 31, or one million dollars ($1,000,000), whichever is less, and, provided further, that such company shall be entitled to withdraw at any time, in whole or in part, its participation in any separate account to which funds have been allocated as provided in this subsection (c), and to receive, upon withdrawal, its proportionate share of the value of the assets of the separate account at the time of withdrawal.

(d) Except as hereinafter provided, the amounts allocated to any separate account and accumulations thereon may be invested and reinvested without regard to any requirements or limitations prescribed by the laws of this State governing the investments of life insurance companies; provided, that to the extent that the company's reserve liability with regard to (i) benefits guaranteed as to amount and duration, and (ii) funds guaranteed as to principal amount or stated rate of interest is maintained in any separate account, a portion of the assets of such separate account at least equal to such reserve liability shall be, except as the Commissioner may otherwise approve, invested in accordance with the laws of this State governing the investments of life insurance companies. The investments in such separate account or accounts shall not be taken into account in applying the investment limitations applicable to other investments of the company.

(e) With respect to seventy-five percent (75%) of the market value of the total assets in a separate account no company shall purchase or otherwise acquire the securities of any issuer, other than securities issued or guaranteed as to principal or interest by the United States, if immediately after such purchase or acquisition the market value of such investment, together with prior investments of such separate account in such security taken at market, would exceed ten percent (10%) of the market value of the assets of said separate account; provided, however, that the Commissioner may waive such limitation if, in his opinion, such waiver will not render the operation of such separate account hazardous to the public or the policyholders in this State.

(f) No separate account shall invest in the voting securities of a single issuer in an amount in excess of ten percent (10%) of the total issued and outstanding voting securities of such issuer provided that the foregoing shall not apply with respect to securities held in separate accounts, the voting rights in which are exercisable only in accordance with instructions from persons having interests in such accounts.

(g) The limitations provided in subsections (e) and (f) above shall not apply to the investment with respect to a separate account in the securities of an investment company registered under the Investment Company Act of 1940, provided that the investments of such investment company comply in substance with subsections (e) and (f) hereof.

(h) The income, if any, and gains and losses, realized or unrealized, from assets allocated to each account shall be credited to or charged against the account without regard to other income, gains or losses of the company.

(i) Unless otherwise approved by the Commissioner, assets allocated to a separate account shall be valued at their market value on the date of valuation, or if there is no readily available market, then as provided under the terms of the contract or the rules or other written agreement applicable to such separate account; provided, that unless otherwise approved by the Commissioner that portion of the assets of such separate account equal to the company's reserve liability with regard to the guaranteed benefits and funds referred to in subsection (d) hereof, if any, shall be valued in accordance with the rules otherwise applicable to the company's assets. The reserve liability for variable annuity contracts shall be determined in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees.

(j) If and to the extent so provided under the applicable contracts, that portion of the assets of any such separate account equal to the reserves and other contract liabilities with respect to such account shall not be chargeable with liabilities arising out of any other business the company may conduct.

(k) The life insurance company shall have the power and the company's charter shall be deemed amended to authorize such company to do all things necessary under any applicable state or federal law in order that variable annuity contracts may be lawfully sold or offered for sale including, without limitation, the power to provide for management of a separate account by persons who may otherwise be unaffiliated with the life insurance company and the power to grant in connection with such contracts voting rights with respect to the management of and the investment and other policies of a separate account. This provision shall not affect existing laws pertaining to the voting rights of the life insurance company's policyholders.

(l) Amounts allocated to a separate account in the exercise of the power granted by this section shall be owned by the company, and the company shall not be, or hold itself out to be, a trustee with respect to such amounts.

(m) The company shall not, in connection with the allocation of investments or expenses, or in any other respect, discriminate unfairly between separate accounts or between separate and other accounts, but this provision shall not require the company to follow uniform investment policies for its accounts.

(n) No sale, exchange or other transfer of assets may be made by a company between any of its separate accounts or between any other investment account and one or more of its separate accounts unless, in case of a transfer into a separate account, such transfer is made solely to establish the account or to support the operation of the contracts with respect to the separate account to which the transfer is made, and unless such transfer, whether into or from a separate account, is made (i) by a transfer of cash, or (ii) by a transfer of securities having a readily determinable market value, provided that such transfer of securities is approved by the Commissioner. The Commissioner may approve other transfers among such accounts if, in his opinion, such transfers would not be inequitable.

(o) Any variable annuity contract providing benefits payable in variable amounts delivered or issued for delivery in this State shall contain a statement of the essential features of the procedure to be followed by the company in determining the dollar amount of such variable benefits. Any such contract, including a group contract and any certificate in evidence of variable benefits issued thereunder, shall state that such dollar amount will vary to reflect investment experience and shall contain on its first page a statement to the effect that the benefits thereunder are on a variable basis.

(p) Any variable annuity contract providing benefits payable in variable amounts issued under this section may include as an incidental benefit provision for payment on death during the deferred period of an amount not in excess of the greater of the sum of the premiums or stipulated payments paid under the contract or the value of the contract at time of death; such contracts will be deemed not to be contracts of life insurance and therefore not subject to the provisions of the insurance law governing life insurance contracts. Provision for any other benefit on death during the deferred period will be subject to such insurance provisions.

(q) No domestic life insurance company and no other life insurance company shall deliver or issue for delivery within this State any contracts under this section unless it is licensed or organized to do a life insurance or annuity business in this State, and the Commissioner of Insurance is satisfied that its financial condition and its methods of operation in connection with the issuance of such contracts will not render its operation hazardous to the public or its policyholders in this State. In determining the qualification of a company requesting authority to deliver such contracts within this State, the Commissioner of Insurance shall consider, among other things:

(1) The history and financial condition of the company;
(2) The character, responsibility and general fitness of the officers and directors of the company; and
(3) The law and regulations under which the company is authorized in the state of domicile to issue variable annuity contracts.

An authorized life insurance company, whether domestic, foreign or alien, which issues variable annuity contracts and which is a subsidiary of (or affiliated through common management or ownership with) another life insurance company authorized to do business in this State may be deemed to have met the provisions of this subsection if either it or the parent or affiliated company meets the requirements hereof.

(r) The Commissioner of Insurance shall have sole and exclusive authority to regulate the issuance by life insurance companies and the sale of such contracts and to issue such reasonable rules and regulations as may be necessary to carry out the purposes and provisions of this section, and such contracts and the life insurance companies which issue them shall not be subject to the Securities Law of North Carolina nor to the jurisdiction of the Secretary of State thereunder; provided, however, that any person that offers for sale or sells such contracts shall be subject to the Securities Law of North Carolina.

(s) Except as otherwise provided in this section, all pertinent provisions of the insurance laws of this State shall apply to separate accounts and contracts issued in connection therewith.

§ 58-86.2. Restrictions on purchase and sale of equity securities of domestic companies. — (a) Statement of Ownership of Equity Securities. — Every person who is directly or indirectly the beneficial owner of more than ten per cent (10%) of any class of any equity security of a domestic stock insurance company or who is a director or an officer of such company, shall file in the office of the Commissioner on or before the first day of June, 1966, or within ten days after he becomes such beneficial owner, director or officer, a statement, in such form as the Commissioner may prescribe, of the amount of all equity securities of such company of which he is the beneficial owner, and within ten days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, shall file in the office of the Commissioner a statement, in such form as the Commissioner may prescribe, indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month.

(b) Profit Made from Sale of Equity Security Held Less than Six Months.— For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director, or officer by reason of his relationship to such company, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such company within a period of less than six months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the company, irrespective of any intention on the part of such beneficial owner, director or officer in entering into such transaction of holding the security purchased or of not repurchasing the security sold for a period exceeding six months. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the company, or by the owner of any equity security of the company in the name and in behalf of the company, if the company shall fail or refuse to bring such suit within sixty days after request or shall fail diligently to prosecute the same thereafter; but no such suit shall be brought more than two years after the date such profit was realized. This section shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the equity security involved, or any transaction or transactions which the Commissioner by rules and regulations may exempt as not comprehended within the purpose of this section.

(c) Delivery of Security Sold. — It shall be unlawful for any such beneficial owner, director or officer, directly or indirectly, to sell any equity security of such company if the person selling the security or his principal (i) does not own the security sold, or (ii) if owning the security, does not deliver it against such sale within twenty days thereafter, or does not within five days after such sale deposit it in the mails or other usual channels of transportation; but no person shall be deemed to have violated this section if he proves that notwithstanding the exercise of good faith he was unable to make such delivery or deposit within such time, or that to do so would cause undue inconvenience or expense.

(d) Sales by Dealers.—The provisions of subsection (b) shall not apply to any purchase and sale, or sale and purchase, and the provisions of subsection (c) shall not apply to any sale, of an equity security of a domestic stock insurance company not then or theretofore held by him in an investment account, by a dealer in the ordinary course of his business and incident to the establishment or maintenance by him of a primary or secondary market (otherwise than on an exchange as defined in the Securities Exchange Act of 1934) for such security. The Commissioner may, by such rules and regulations as he deems necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market.

(e) Arbitrage Transactions.—The provisions of subsections (a), (b) and (c) of this section shall not apply to foreign or domestic arbitrage transactions unless made in contravention of such rules and regulations as the Commissioner may adopt in order to carry out the purposes of this section.

(f) "Equity Security" Defined. — The term "equity security" when used in this section means any stock or similar security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the Commissioner shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as he may prescribe in the public interest or for the protection of investors, to treat as an equity security.

(g) Exemptions from Requirements of Section.—The provisions of subsections (a), (b) and (c) hereof shall not apply to equity securities of a domestic stock insurance company if

(1) Such securities shall be registered, or shall be required to be registered, pursuant to § 12 of the Securities Exchange Act of 1934, as amended, or if

(2) Such domestic stock insurance company shall not have any class of its equity securities held of record by one hundred or more persons on the last business day of the year next preceding the year in which equity securities of the company would be subject to the provisions of subsections (a), (b) and (c) hereof except for the provisions of this subdivision (2).

(h) Rules and Regulations of Commissioner.—The Commissioner shall have the power to make such rules and regulations as may be necessary for the execution of the functions vested in him by subsections (a) through (g) hereof, and may for such purpose classify domestic stock insurance companies, securities, and other persons or matters within his jurisdiction. No provision of subsections (a),

(b) and (c) hereof imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule or regulation of the Commissioner, notwithstanding that such rule or regulation may, after such act or omission, be amended or rescinded or determined by judicial or other authority to be invalid for any reason.

(i) Severability.—If any part or provision of this section or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this section or the application thereof to other persons or circumstances. (1965, c. 127, s. 2.)

Editor's Note.—This section became effective May 31, 1966.

ARTICLE 6A.

Exchange of Stock.

§ **58-86.3. Exchange of securities.** — Any domestic insurance company with capital stock (hereinafter referred to as "domestic company") may adopt a plan of exchange providing for the exchange by its shareholders of their stock in the domestic company for (i) shares of stock issued by any other domestic stock insurance company or other domestic stock corporation organized or reorganized under the laws of this State—such other corporation being hereinafter referred to as the "acquiring corporation"; (ii) other securities issued by the acquiring corporation; (iii) cash; (iv) other consideration; (v) any combination of such stock, such other securities, cash or other consideration. For the purpose of this article, a "domestic company" or "domestic stock insurance company" shall mean a business corporation or a stock insurance company, respectively, organized and existing under the laws of the State of North Carolina. (1967, c. 938.)

Editor's Note.—This article in the 1967 act contained sections numbered 58-86.2 through 58-86.8. As a section numbered 58-86.2 already appeared in the Supplement, the sections added by the 1967 act have been renumbered 58-86.3 through 58-86.9.

§ **58-86.4. Procedure for exchange.**—Subject to the provisions of G.S. 58-86.3, any domestic company may adopt a plan of exchange with any acquiring corporation providing for the exchange of the outstanding stock of the domestic company for shares of stock or other securities issued by the acquiring corporation or cash or other consideration or any combination thereof in the following manner:

(1) Approval of the Boards of Directors.—The boards of directors of the domestic company and of the acquiring corporation by resolutions shall adopt a plan of exchange which shall set forth the terms and conditions of the exchange and the mode of carrying the same into effect and such other provisions with respect to the exchange as may be deemed necessary or desirable.

(2) Approval of Commissioner of Insurance.—The domestic company and the acquiring corporation shall submit to the Commissioner of Insurance three copies of the plan of exchange certified by an officer of each as having been adopted in accordance with subdivision (1) of this section. Such copies of the plan of exchange shall be accompanied by (i) financial statements of the domestic company and the acquiring corporation for the last preceding fiscal year, (ii) pro forma financial statements of each corporation based on the assumption that the plan

of exchange was effective as proposed at the end of the last preceding fiscal year of the domestic company, (iii) an estimate of expenses already incurred and of expenses expected to be incurred in connection with the proposed plan of exchange, (iv) a written statement which sets forth for each corporation the identity of officers and directors of the domestic company and of the acquiring corporation, and (v) any other information which the Commissioner may require with respect to such plan.

No director, officer, member or subscriber of the domestic company or of the acquiring corporation, except as is expressly provided by the plan filed with the Commissioner of Insurance, shall receive any fee, commission, other compensations or valuable considerations whatever, for in any manner aiding, promoting, or assisting in the promotion of the plan of exchange.

The Commissioner of Insurance shall hold a public hearing upon the terms, conditions and provisions of the proposed plan of exchange to determine if the proposed plan of exchange is reasonable, fair and in the public interest. At such hearing the shareholders and the policyholders of the domestic company and the shareholders of the acquiring corporation and also the policyholders of the acquiring corporation, if it is an insurance company, and any other interested parties shall have the right to appear and to become parties to the proceedings.

Such hearing shall be commenced not less than 30 days after the date on which the plan of exchange is presented to the Commissioner. The hearing shall be held at such place, date and time as the Commissioner shall specify. Notice of the hearing shall be published in a newspaper of general circulation in the city or cities wherein are located the registered office of the domestic company and of the acquiring corporation once a week for two successive weeks, the last publication of such notice to be not more than two weeks prior to the hearing date. Written notice of the hearing shall be mailed at least ten days prior to the hearing by the domestic company and by the acquiring corporation to all of their respective shareholders. All expenses of publication shall be borne by the domestic company or the acquiring corporation or both, as shall be specified in the plan of exchange, and the Commissioner may charge the domestic company or the acquiring corporation, or both, with such of the costs of the hearing as he may deem reasonable.

The Commissioner shall issue a written order approving the plan of exchange as delivered to him by the domestic company and the acquiring corporation and such modification therein as the board of directors of each such corporation shall approve, if he finds (i) that the plan, including all such modification, if effected, will not tend adversely to affect the financial stability or management of the domestic company or the general capacity or intention to continue the safe and prudent transaction of the insurance business of the domesic company, or of the acquiring corporation, if it is a domestic insurance company; (ii) that the interests of the policyholders and shareholders of the domestic company, and, if the acquiring corporation is a domestic insurance company, the policyholders of the acquiring corporation are protected; (iii) that the terms and conditions of the plan of exchange and the proposed issuance and exchange are fair and reasonable; and (iv) that the plan of exchange is consistent with the law and will not conflict with the public interest. If the Commissioner fails to approve the plan, he shall state his reasons for such failure in his order made on such hearing.

Any order issued by the Commissioner hereunder shall be subject to court review in accordance with the provisions of G.S. 58-9.3.

(3) Approval of Shareholders.—The plan of exchange as approved by the Commissioner of Insurance shall then be submitted to a vote of the shareholders of the domestic company at an annual or special meeting of the shareholders. Notice of the submission of the plan to the shareholders shall be included in the notice of such annual or special meeting. The plan shall be approved by the shareholders of the domestic

company upon receiving the affirmative votes representing at least two thirds of the outstanding capital stock of the domestic company or such larger proportion as may be specified in the plan of exchange. Notwithstanding shareholder adoption of the plan of exchange and at any time prior to the filing of the certificate setting forth the plan of exchange pursuant to G.S. 58-86.5, the plan of exchange may be abandoned pursuant to a provision for such abandonment, if any, contained in the plan of exchange.

(4) Objection.—Any shareholder of the domestic company may, by following the procedure set forth in G.S. 55-113 (b) object to the plan of exchange and become entitled, if the plan becomes effective, to be paid by the domestic company or the acquiring corporation the fair value of his shares in the domestic company. Such payment and the amount thereof shall be determined in accordance with the provisions of G.S. 55-113 (d), (e), (f), (g) and (h). (1967, c. 938.)

Editor's Note. — By virtue of Session Laws 1943, c. 170, "Commissioner of Insurance" has been substituted for "Insurance Commissioner" in the catchline of subdivision (2).

§ **58-86.5. Filing plan of exchange.**—Not earlier than 31 days after the date of the meeting of shareholders of the domestic company at which the plan of exchange was approved by such shareholders, a certificate setting forth (i) the plan of exchange and (ii) the vote by which such plan was adopted by the shareholders of the domestic company, or (iii) that the plan of exchange has been abandoned, shall be signed on behalf of the domestic company by its president or a vice-president and also by its secretary or an assistant secretary and shall then be presented in triplicate to the Commissioner of Insurance. If the certificate indicates that the plan of exchange has been approved by the domestic company's shareholders as required by G.S. 58-86.4 (3) and that the facts otherwise conform to the law, he shall endorse his approval on the certificate and the same shall then be filed as provided in G.S. 55-4. Upon the filing of such certificate, the plan of exchange and the issuance and exchange provided for therein shall become effective, unless a later date and time is specified in the plan of exchange, in which event the plan of exchange and issuance and exchange provided for therein shall become effective upon such later date and time. (1967, c. 938.)

§ **58-86.6. Effect of exchange.**—Upon the plan of exchange becoming effective, the exchange provided for therein shall be deemed to have been consummated, each shareholder of the domestic company shall cease to be a shareholder of such company and the ownership of all shares of the issued and outstanding stock of the domestic company shall vest in the acquiring corporation automatically without any physical transfer or deposit of certificates representing such shares.

Certificates representing shares of the domestic company prior to the plan of exchange becoming effective shall, after the plan of exchange becomes effective, represent (i) shares of the issued and outstanding capital stock or other securities issued by the acquiring corporation, and (ii) the right, if any, to receive such cash or other consideration upon such terms as shall be specified in the plan of exchange: Provided, that the plan of exchange (i) shall specify that all certificates representing shares of stock of the domestic company may, after the plan of exchange becomes effective, be exchanged for shares of stock or other securities issued by the acquiring corporation or cash or other consideration or any combination thereof upon such terms as shall be specified in the plan of exchange, and (ii) may require that all certificates representing shares of stock of the domestic company shall, after the plan of exchange becomes effective, represent only the right to receive shares of stock or other securities issued by the acquiring corporation or cash or other consideration or any combination thereof upon such terms as shall be specified in the plan of exchange. (1967, c. 938.)

§ 58-86.7. Authorized insurance business and regulatory authority.—(a) Nothing contained in this article shall be construed to authorize any insurance company to engage in any kind or kinds of insurance business not authorized by its articles of incorporation, or to authorize any acquiring corporation which is not an insurance company to engage directly in the business of insurance. Subsequent to the effective date of the plan of exchange, the Commissioner having regard to the findings stated in subdivision (2) of G.S. 58-86.4, shall have the authority to require that the affairs of the domestic company be conducted in such manner as to assure the continuing safe conduct and transaction of the domestic company's business of insurance.

(b) If at any time the Commissioner finds, after due notice and opportunity to be heard as provided by G.S. 58-9.2, that the business and affairs of the acquiring corporation are of such nature or are conducted in such manner as to endanger the continued solvency of any domestic insurance company, to be harmful to any domestic insurance company, or to impair the rights of any policyholder, he shall issue such written order or orders as he deems appropriate to assure that the business and affairs of the acquiring corporation are of such nature and are conducted in such manner as to no longer endanger the solvency of any domestic insurance company, to be harmful to any domestic insurance company, or to impair the rights of any policyholder, including an order requiring the acquiring corporation to divest itself of the stock of the domestic company.

(c) The Commissioner may examine, at such time or times as he may deem appropriate, the financial and business affairs of the acquiring corporation, and in connection with any such examination or examinations the acquiring corporation shall make available its books, records and accounts, and the Commissioner may require from the acquiring corporation and its officers, directors and employees the submission of such written or oral statements as the Commissioner may deem necessary or advisable. The cost of the examination shall be borne by the acquiring corporation at the same rate as is provided for under G.S. 58-63 (3).

(d) Any acquiring corporation which owns or controls any domestic insurance company shall be subject to all proxy solicitation and insider trading regulations promulgated from time to time by the Commissioner of Insurance pursuant to statutory authority.

(e) It shall be unlawful for any domestic insurance company which has exercised the privileges allowed by this article, except upon written approval by the Commissioner and subject to the provisions of G.S. 58-79,

(1) To invest any of its funds in the capital stock, bonds, debentures, or other obligations of any acquiring corporation of which it is a subsidiary, or of any other subsidiary of any such acquiring corporation;

(2) To accept the capital stock, bonds, debentures, or other obligations of any acquiring corporation of which it is a subsidiary or any other subsidiary of any such acquiring corporation, as collateral security for advances made to any person or company;

(3) To purchase securities, other assets or obligations under repurchase agreement from any acquiring corporation of which it is a subsidiary or any other subsidiary of any such acquiring corporation; and

(4) To make any loan, discount or extension of credit to any acquiring corporation of which it is a subsidiary or to any other subsidiary of any such acquiring corporation. (1967, c. 938.)

§ 58-86.8. Powers of Commissioner not affected.—Nothing in this article shall affect the power of the Commissioner to regulate, supervise and control insurance companies to the extent of and as provided by this chapter. (1967, c. 938.)

§ 58-86.9. Application of article to other domestic corporations.— Any such domestic corporation, other than a domestic insurance company, which shall acquire the majority of the voting capital stock of any domestic insurance company shall be subject to the regulations contained in this article; provided, however, that the provisions of this article shall not apply to any domestic corporation which has acquired a domestic insurance company or companies prior to June 27, 1967. (1967, c. 938.)

Article 13.

Fire Insurance Rating Bureau.

§ 58-125. North Carolina fire insurance rating bureau created.

The purpose of this article is to provide for the public, at reasonable cost, insurance in financially responsible companies. Not only fair play, but the accomplishment of this legislative purpose as well, requires that the premium be fixed at a level which will enable the insuring company (i.e., the entire insurance industry in this State treated as if it were one company) (1) to pay the losses which will be incurred during the life of the policies to be issued under such rates, (2) to pay other operating expenses, and (3) to retain a "fair and reasonable profit" and no more. In re North Carolina Fire Ins. Rating Bureau, 275 N.C. 15, 165 S.E.2d 207 (1969).

The statutory plan of this article contemplates a uniform premium rate schedule for all companies operating in the State. In re North Carolina Fire Ins. Rating Bureau, 275 N.C. 15, 165 S.E.2d 207 (1969).

In the statutory plan, the State has undertaken to make available to its people the economic necessity of fire insurance policies which actually insure by authorizing the bureau to propose premium rates just as would a single company having a monopoly of the fire insurance business in North Carolina. To protect the public against the danger of exorbitant rates for this economic necessity, which danger is inherent in monopolistic price fixing, the legislature has vested in the Commissioner its own authority to withhold approval of such rates proposed by the bureau and to fix rates which are fair and reasonable. In re North Carolina Fire Ins. Rating Bureau, 275 N.C. 15, 165 S.E.2d 207 (1969).

The bureau is to be regarded as if it were the only insurance company operating in North Carolina, for rate-making purposes, and as if it had an earned premium experience, an incurred loss experience and an operating expense experience equivalent to the composite of those of the companies actually in operation. In re North Carolina Fire Ins. Rating Bureau, 275 N.C. 15, 165 S.E.2d 207 (1969).

There is no presumption that a rate filing by the bureau is correct and proper. In re North Carolina Fire Ins. Rating Bureau, 275 N.C. 15, 165 S.E.2d 207 (1969).

The burden is upon the bureau to show that the rate schedule proposed by it is fair and reasonable and that it does not discriminate unfairly between risks. In re North Carolina Fire Ins. Rating Bureau, 275 N.C. 15, 165 S.E.2d 207 (1969).

§ 58-126. Scope of article.

Quoted in In re North Carolina Fire Ins. Rating Bureau, 275 N.C. 15, 165 S.E.2d 207 (1969).

§ 58-127. Rating bureau.

The problem for the rate maker is to determine what amount, collected as premiums at the inception of the policies hereafter to be issued, will enable the company (1) to pay losses to be incurred during the life of such policies, at replacement costs prevailing at the time of such losses, (2) to pay other proper operating expenses of the company, and (3) to retain a "fair and reasonable profit." In re North Carolina Fire Ins. Rating Bureau, 275 N.C. 15, 165 S.E.2d 207 (1969).

Cited in Allstate Ins. Co. v. Lanier, 242 F. Supp. 73 (E.D.N.C. 1965).

§ 58-130. Statistical reports.

Quoted in In re North Carolina Fire Ins. Rating Bureau, 275 N.C. 15, 165 S.E.2d 207 (1969).

§ 58-131. Reasonableness of rates.

Quoted in In re North Carolina Fire Ins. Rating Bureau, 275 N.C. 15, 165 S.E.2d 207 (1969).

§ 58-131.1. Approval of rates.

The Commissioner need not approve or disapprove a filing by the bureau in its entirety. In re North Carolina Fire Ins. Rating Bureau, 275 N.C. 15, 165 S.E.2d 207 (1969).

There is nothing in the statutes that requires the Commission to accept the rate or rates proposed, or to reject them altogether. In re North Carolina Fire Ins. Rating Bureau, 275 N.C. 15, 165 S.E.2d 207 (1969).

The bureau may amend its filing so as to propose a smaller increase in premium rates than that proposed in the original filing, but, in the absence of such amendment, the Commissioner, upon proper findings of fact supported by substantial evidence, may fix premium rates at a level such as to allow part but not all of the increase proposed by the bureau. In re North Carolina Fire Ins. Rating Bureau, 275 N.C. 15, 165 S.E.2d 207 (1969).

§ 58-131.2. Reduction or increase of rates.

The ultimate question to be determined by the Commissioner is whether an increase in premium rates is necessary in order to yield a "fair and reasonable profit" in the immediate future (i.e., treating the bureau as if it were an operating company whose experience in the past is the composite of the experiences of all of the operating companies), and, if so, how much increase is required for that purpose. This cannot be determined without specific findings of fact, upon substantial evidence, as to (1) the reasonably anticipated loss experience during the life of the policies to be issued in the near future, (2) the reasonably anticipated operating expenses in the same period, and (3) the percent of earned premiums which will constitute a "fair and reasonable profit" in that period. In re North Carolina Fire Ins. Rating Bureau, 275 N.C. 15, 165 S.E.2d 207 (1969).

The Commissioner's projection of past experience and present conditions into the future is presumed to be correct and proper if supported by substantial evidence (§ 58-9.3) and if he has taken into account all of the relevant facts which he is directed by statute to consider. In re North Carolina Fire Ins. Rating Bureau, 275 N.C. 15, 165 S.E.2d 207 (1969).

Statute Determinative of What Things Are Proper for Consideration by Commissioner.—The expert opinion of a witness, however well informed, as to what things are proper for consideration by the Commissioner in making his projection is not determinative. That is a matter determined by the provisions of the statute. In re North Carolina Fire Ins. Rating Bureau, 275 N.C. 15, 165 S.E.2d 207 (1969).

Formulating new rate-making procedures is a policy matter and should rest with the Commissioner. In re North Carolina Fire Ins. Rating Bureau, 2 N.C. App. 10, 162 S.E.2d 671 (1968).

But Not Consideration of Prevailing Cost Trends.—In its holding that consideration of a prevailing cost trend, established by otherwise competent and credible evidence, is "a policy matter and should rest with the Commissioner," the Court of Appeals erred and to that extent its decision is hereby reversed. In re North Carolina Fire Ins. Rating Bureau, 275 N.C. 15, 165 S.E.2d 207 (1969).

A "fair and reasonable profit" varies from time to time, like construction costs and consumer prices. In re North Carolina Fire Ins. Rating Bureau, 275 N.C. 15, 165 S.E.2d 207 (1969).

Premium Rates Not Fixed Retroactively.—It is not only impractical to fix premium rates retroactively, it is expressly required by this section that premium rates fixed in accordance with the statutory plan be applied only to policies issued after the rates are so established. Consequently, the entire procedure contemplates a looking to the future. In re North Carolina Fire Ins. Rating Bureau, 275 N.C. 15, 165 S.E.2d 207 (1969).

Insurance rate making is a technical, complicated and involved procedure carried on by trained men. It is not an exact science. Judgment based upon a thorough knowledge of the problem must be applied. Courts cannot abdicate their duty to examine the evidence and the adjudication, and to interpret and apply the law, but they must recognize the value of the judgment of an insurance commissioner who is specializing in the field of insurance and the efficacy of an adjudication supported by evidence of experts who devoted a lifetime of service to rate making. In re North Carolina Fire Ins. Rating Bureau, 2 N.C. App. 10, 162 S.E.2d 671 (1968).

Fixing Premium Rate Is Exercise of Legislative Power.—In fixing by law the premium rate, it is the legislative power of the State which is being exercised. In re North Carolina Fire Ins. Rating Bureau, 275 N.C. 15, 165 S.E.2d 207 (1969).

Duty Imposed by Section.—This section imposes upon the Commissioner the duty of fixing such rates as will produce "a fair and reasonable profit" and no more. In re North Carolina Fire Ins. Rating Bureau, 275 N.C. 15, 165 S.E.2d 207 (1969).

Compliance with Statutory Procedures and Standards.—The Commissioner of Insurance has no authority to prescribe or regulate premium rates except insofar as that authority has been conferred upon him by statute. In exercising that authority he must comply with the statutory procedures and standards. In re North Carolina Fire Ins. Rating Bureau, 275 N.C. 15, 165 S.E.2d 207 (1969).

The use of past experience to estimate future needs involves, of necessity, a projection of known data into the unknown future. In re North Carolina Fire Ins. Rating Bureau, 275 N.C. 15, 165 S.E.2d 207 (1969).

A "reasonable profit" cannot be determined until there is first a determination of reasonable expenses attributable to the business operated in this State. In re North Carolina Fire Ins. Rating Bureau, 275 N.C. 15, 165 S.E.2d 207 1969).

Six Cents Out of Each Dollar as "Fair and Reasonable Profit". — Whether six cents out of each dollar of gross revenue, i.e., earned premiums, is a fair and reasonable profit, an excessive profit, or an insufficient profit must be determined by the Commissioner from evidence, and this involves a projection into the future of past experience and present conditions. It involves consideration of profits accepted by the investment market as reasonable in business ventures of comparable risk. In re North Carolina Fire Ins. Rating Bureau, 275 N.C. 15, 165 S.E.2d 207 (1969).

"Prospective Loss Experience" and "Loss Trend". — "Prospective loss experience" and the present "loss trend" relate not only to the number of fires and to the extent of the physical destruction thereby, but also to the cost of replacement of the destroyed property. In re North Carolina Fire Ins. Rating Bureau, 275 N.C. 15, 165 S.E.2d 207 (1969).

Stopping Adjusting Process After Bringing Past Experience to Present Level.—To bring past experience to the present level by pro forma adjustments of premiums earned and losses incurred, and then to stop the adjusting process, is to project into the future the assumption that there will be no further change in the incidence of fires, in the extent of physical destruction thereby, or in the cost of replacing the destroyed property. In re North Carolina Fire Ins. Rating Bureau, 275 N.C. 15, 165 S.E.2d 207 (1969).

The determination of the cost of replacing losses to be incurred at price levels then to prevail is a matter of informed judgment and not of precise calculation. Such judgment can be formed only by consideration both of the past experience and of the present prevailing conditions. This is true both as to the number and physical extent of the losses to be anticipated and as to the cost of replacing such losses as they occur. In re North Carolina Fire Ins. Rating Bureau, 275 N.C. 15, 165 S.E.2d 207 (1969).

Recent events reliably indicating a rise or a fall in replacement costs previously experienced is a relevant circumstance in determining the extent to which past experience supplies a reliable guide to the future in the matter of replacement costs. In re North Carolina Fire Ins. Rating Bureau, 275 N.C. 15, 165 S.E.2d 207 (1969).

Adjustment of Past Loss Experience.—The past loss experience should be adjusted to take into account any newly discovered practicable procedures and devices for reducing the risk of fire. In re North Carolina Fire Ins. Rating Bureau, 275 N.C. 15, 165 S.E.2d 207 (1969).

Evidence of "Reasonable and Related Factors".—Evidence, otherwise competent, of a cost trend, upward or downward, which continues from the past into the present, and expert testimony, otherwise competent, that such trend may reasonably be expected to continue into the future, so that future costs will be higher or lower than present costs, is evidence of "reasonable and related factors" which this section requires the Commissioner to consider in making his own projection into the future. It is not a proper ground for the rejection of such evidence that such projection of an upward or downward cost trend into the future has never before been used in the rate-making process. The statute does not contemplate that procedures and methods for determining replacement costs for the future shall be frozen. In re North Carolina Fire Ins. Rating Bureau, 275 N.C. 15, 165 S.E.2d 207 (1969).

Statistical evidence which becomes available at any time during a public hearing for the establishment of fire insurance rates and the use of which will produce no unreasonable delay should be admitted and taken into consideration in fixing rates. In re North Carolina Fire Ins. Rating Bureau, 2 N.C. App. 10, 162 S.E.2d 671 (1968).

Testimony of Actuary. — The presence in the record of testimony of the actuary for the Department of Insurance that, in his admittedly expert opinion, it would not be "conservative" or "proper" for the Commissioner, in fixing rates for the future, to consider a projection of the present and past cost trend does not afford a basis for calling into play the statutory presumption that the order of the Commissioner, resting upon the same conclusion, is correct and proper because "supported by substantial evidence." It is held that otherwise competent opinion evidence as to such projection is, as a matter of law, relevant to the determination by the Commissioner of the probable loss experience of the companies during the life of policies to be issued in the near future. In re North Carolina Fire Ins. Rating Bureau, 275 N.C. 15, 165 S.E.2d 207 (1969).

Evidence that present conditions are not those which prevailed during former experience is relevant to the translation of the past experience into an informed judgment concerning the future. In re North Carolina Fire Ins. Rating Bureau, 275 N.C. 15, 165 S.E.2d 207 (1969.)

§ 58-131.3. Deviations.

Quoted in In re North Carolina Fire Ins. Rating Bureau, 275 N.C. 15, 165 S.E.2d 207 (1969).

§ 58-131.5. Hearing.

Matters within Discretion of Commissioner.—It is within the sound discretion of the Commissioner to require complex statistical exhibits to be made available to the adverse party prior to the hearing, to restrict or deny the use of newly developed statistical data sprung suddenly at the hearings by either party to the surprise of the other, and to grant such recess of the hearing as he may deem necessary to permit reasonable opportunity to study such data and to prepare evidence to refute it. In re North Carolina Fire Ins. Rating Bureau, 275 N.C. 15, 165 S.E.2d 207 (1969).

This section clearly contemplates the introduction of relevant and otherwise competent evidence at the rehearing. In re North Carolina Fire Ins. Rating Bureau, 275 N.C. 15, 165 S.E.2d 207 (1969).

Such Evidence Is Not Limited to Conditions Prevailing At or Before Date of Filing.—Neither the Department of Insurance, any other protestant, nor the bureau is confined to evidence relating to conditions prevailing at the date of the filing and to experience prior thereto. In re North Carolina Fire Ins. Rating Bureau, 275 N.C. 15, 165 S.E.2d 207 (1969).

While the statute requires that a hearing by the Commissioner upon a filing by the bureau be held promptly, it is well within the bounds of possibility that, between the filing and the hearing, experience may be had which would be most relevant to the determination of the direction of a projection of the present "loss trend" into the future. Such change in conditions after the date of the filing might indicate a sharply downward trend in construction costs or in fire hazard. Surely, the statute does not contemplate that the Commissioner should shut his eyes to such a change in conditions after the date of the filing. It is equally clear that the bureau may offer evidence of more recent experience which corroborates its allegations in the filing. In re North Carolina Fire Ins. Rating Bureau, 275 N.C. 15, 165 S.E.2d 207 (1969).

Where the Commissioner simply ruled, as a matter of law, that all evidence, however relevant, would be cut off as of the date of the filing, he did not follow the mandate of the statute. In re North Carolina Fire Ins. Rating Bureau, 275 N.C. 15, 165 S.E.2d 207 (1969).

Evidence relevant to the issues involved in the original hearing and to the reasons stated in the petition for rehearing, if otherwise competent, is admissible at a rehearing. In re North Carolina Fire Ins. Rating Bureau, 275 N.C. 15, 165 S.E.2d 207 (1969).

Application for rehearing, itself, automatically stays former order of Commissioner. In re North Carolina Fire Ins. Rating Bureau, 275 N.C. 15, 165 S.E.2d 207 (1969).

§ 58-131.8. Review of order of Commissioner.

Quoted in In re North Carolina Fire Ins. Rating Bureau, 275 N.C. 15, 165 S.E.2d 207 (1969).

ARTICLE 14.

Real Estate Title Insurance Companies.

§ **58-134.1. Investment of capital.**—Any real estate title insurance company having a capital stock of more than fifty thousand dollars ($50,000.00), may, with the consent of the Commissioner, after investing fifty thousand dollars ($50,000.00) of the capital, as provided in this chapter, invest not to exceed one fourth of the total capital stock in abstract or title plants; and no such company shall guarantee or insure in any one risk on real property located in North Carolina more than forty percent (40%) of its combined capital and surplus without first having the approval of the Commissioner, which approval shall be endorsed upon the policy. (1945, c. 386; 1967, c. 936.)

Editor's Note. — The 1967 amendment inserted "on real property located in North Carolina" and deleted "of North Carolina" following "Commissioner" near the end of the section.

§ **58-134.2. Unearned premium reserve.** — Every domestic title insurance company shall, in addition to other reserves, establish and maintain a reserve to be known as the "unearned premium reserve" for title insurance, which shall at all times and for all purposes be considered and constitute unearned portions of the original risk premiums and shall be charged as a reserve liability of such title insurance company in determining its financial conditions. (1969, c. 897.)

§ **58-134.3. Amount of unearned premium reserve.** — (a) The unearned premium reserve of every domestic title insurance company shall consist of the aggregate of:

(1) The amount of the unearned premium reserve held as of June 19, 1969.

(2) The amount of all additions required to be made to such reserve by this section, less the reduction of such aggregate amount required hereby.

(b) On each contract of title insurance issued by a domestic title insurance company on and after June 19, 1969, there shall be reserved initially as an unearned premium reserve a sum equal to ten per centum (10%) of the original risk premium charged therefor.

(c) After the aggregate of the amounts set aside in unearned premium reserves reaches a total of one hundred fifty thousand dollars ($150,000.00) then those amounts set aside in any calendar year pursuant to subsection (b) of this section, shall be reduced annually, at the end of each calendar year following the year in which the policy is issued, at the annual rate of one twentieth of the aggregate of such amounts. Provided, the aggregate total of the unearned premium reserves shall not be reduced below one hundred fifty thousand dollars ($150,000.00); provided, however, that if the laws of another jurisdiction in which a domestic title insurance company is licensed has requirements for the maintenance of reserves in excess of those contained in this section, such requirements shall be complied with.

(d) The entire amount of the unearned premium reserve held as of June 19, 1969 shall be presumed to have been added to the reserve in the calendar year next preceding June 19, 1969 and shall be released from said reserve and restored to net profits at the annual rate of one twentieth of the said entire amount.

(e) If substantially the entire outstanding liability under all policies, contracts of title insurance or reinsurance agreements of any such title insurance company shall be reinsured, the value of the consideration received by a reinsuring title insurance company authorized to transact the business of title insurance in this State, shall constitute, in its entirety, unearned portions of original premiums and be added to its unearned premium reserve and deemed, for recovery purposes, to have been provided for liabilities assumed during the year of such reinsurance. The amount of such addition to the unearned premium reserve of such assuming title insurance company shall be not less, however, than two thirds of the amount of the unearned premium reserve required to be maintained by the ceding title insurance company at the time of such reinsurance. (1969, c. 897.)

§ **58-134.4. Unearned premium reserve on policies issued by foreign or alien title insurance companies.**—Every foreign or alien title insurance company licensed to transact title insurance in this State shall reserve and maintain the same reserves as are required of domestic companies under the provisions of G.S. 58-134.4 [58-134.3], unless by the laws of the state or country of domicile of such company there is required to be set aside and maintained an unearned premium reserve in at least as great an amount as is required of domestic companies by that section. (1969, c. 897.)

§ **58-134.5. Maintenance of the unearned premium reserve.**—If by reason of any cause, other than depreciation in the market value of investments, the amount of the assets of a title insurance company held as investments of its unearned premium reserve should on any date be less than the amount required to be maintained by law in such reserve, and the deficiency shall not be promptly cured, such title insurance company shall forthwith give written notice thereof to the Commissioner and shall make no further policies, contracts of title insurance or reinsurance agreements of title insurance until the deficiency shall have been eliminated and until it shall have received written approval from the Commissioner authorizing it to again issue such policies, contracts of title insurance or agreements. (1969, c. 897.)

§ **58-134.6. Use of the unearned premium reserve on liquidation, dissolution or insolvency.**—(a) If a title insurance company becomes insolvent, or is in the process of liquidation or dissolution, or in the possession of the Commissioner:

(1) Such amount of the assets of such title insurance company equal to the unearned premium reserve then remaining as is necessary may be used by or with the written approval of the Commissioner, to pay for reinsurance of the liability of such title insurance company upon all outstanding policies or contracts or reinsurance agreements of title insurance, as to which claims for losses by the holders are not then pending, the balance, if any, of assets equal to the unearned premium reserve fund then remaining, then to be transferred to the general assets of the title insurance company.

(2) The assets other than the unearned premium reserve shall be available to pay claims for losses sustained by holders of policies then pending or arising up to the time reinsurance is effected. In the event that claims for losses are in excess of such other assets of the title insurance company, such claims, when established, shall be paid pro rata out of the surplus assets attributable to the unearned premium reserve, to the extent of such surplus, if any.

(b) In the event that reinsurance is not obtained, the unearned premium reserve and assets constituting minimum capital, or so much as remains thereof after outstanding claims have been paid, shall constitute a trust fund to be held by the Commissioner for twenty years, out of which claims of policyholders shall be paid as they arise. The balance, if any, of such fund shall, at expiration of twenty years, revert to the general assets of the title insurance company. (1969, c. 897.)

ARTICLE 16.

Reciprocal or Inter-Insurance Exchanges.

§ **58-148. Application of other sections.** — Except as otherwise provided in this article, and except where the context otherwise requires, all of the provisions of this chapter relating to all insurers and those relating to insurers transacting the same kind or kinds of insurance which reciprocal insurers are permitted to transact, shall be applicable to reciprocal insurers authorized to do business in this State. Where any of such sections refer to a corporation, company or insurer, the same, when read in connection with and applicable to this article shall be deemed to mean a reciprocal insurer. (1913, c. 183, s. 13; C. S., s. 6409; 1945, c. 386.)

Editor's Note.—
This section is set out above to correct an error appearing in the replacement volume.

ARTICLE 16A.

"Lloyds" Insurance Associations.

§ **58-148.1. "Lloyds" insurance associations may transact business of insurance other than life, on certain conditions.**—Associations of individuals, whether organized within the State or elsewhere, formed upon the plan known as "Lloyds"—whereby each associate underwriter becomes liable for a proportionate part of the whole amount insured by policy—may be authorized to transact business of insurance, other than life, in this State, in like manner and upon the same terms and conditions as are required of and imposed upon insurance companies regularly organized; but all such "Lloyds" whether organized within the State or elsewhere, shall make the same deposit, and upon the same terms and conditions as required by articles 17 and 20 of this chapter for foreign or alien insurance companies incorporated under the laws of any government or state other than the United States or one of the several states of the Union. Provided, such associations shall be subject to all of the laws and regulations of the State of North Carolina relating to the transaction of insurance business within this State. (1967, c. 844.)

ARTICLE 17.

Foreign or Alien Insurance Companies.

§ **58-153.2. Alternative service of process on insurers.**—In addition to the procedures set out in this chapter, insurers may be served with process and subjected to the jurisdiction of the courts of this State pursuant to applicable provisions of chapter 1 and chapter 1A of the General Statutes. (1967, c. 954, s. 3.)

Editor's Note.—Session Laws 1969, c. 803, amends Session Laws 1967, c. 954, s. 10, so as to make the 1967 act effective Jan. 1, 1970. See Editor's note to § 1A-1.

SUBCHAPTER III. FIRE INSURANCE.

ARTICLE 18.

General Regulations of Business.

§ **58-160. Policies for the benefit of mortgagees.** — Where by an agreement with the insured, or by the terms of a fire insurance policy taken out by a mortgagor, the whole or any part of the loss thereon is payable to a mortgagee of the property for his benefit, the company shall, upon satisfactory proof of the rights and title of the parties, in accordance with such terms or agreement, pay all mortgagees protected by such policy in the order of their priority of claim, as their claims appear, not beyond the amount for which the company is liable, and such payments are, to the extent thereof, payment and satisfaction of the liabilities of the company under the policy. Any payment due by the insuring company to mortgagees or loss payees under the terms of the policy shall be made within ninety days of the loss or within sixty days of the filing of proof of loss, whichever is the longer period; provided, the payment of or settlement of the claim of the mortgagee or loss payee under the policy shall in no way constitute an admission of liability as to the insured and the fact of such payment or settlement shall be inadmissible in any action at law. (1899, c. 54, s. 41; Rev., s. 4757; C. S., s. 6420; 1969, c. 1077, s. 1.)

Editor's Note.—

The 1969 amendment added the second sentence.

Session Laws 1969, c. 1077, s. 3, provides: "This act shall be effective upon ratification, but shall apply only to fire and extended coverage policies written after the date of its ratification." The act was ratified June 27, 1969.

ARTICLE 18A.

Fire and Extended Coverage for Beach Area Property.

§ 58-173.1. Declarations and purpose of article.—It is hereby declared by the General Assembly of North Carolina that an adequate market for fire and extended coverage insurance is necessary to the economic welfare of the beach area of the State of North Carolina and that without such insurance the orderly growth and development of the beach area of the State of North Carolina would be severely impeded; that furthermore, adequate insurance upon property in the beach area is necessary to enable homeowners and commercial owners to obtain financing for the purchase and improvement of their property; and that while the need for such insurance is increasing, the market for such insurance is not adequate and is likely to become less adequate in the future; and that the present plans to provide adequate insurance on property in the beach area, while deserving praise, have not been sufficient to meet the needs of this area. It is further declared that the State has an obligation to provide an equitable method whereby every licensed insurer writing fire and extended coverage in North Carolina is required to meet its public responsibility instead of shifting the burden to a few willing and public-spirited insurers. It is the purpose of this article to accept this obligation and to provide a mandatory program to assure an adequate market for fire and extended coverage insurance in the beach area of North Carolina. (1967, c. 1111, s. 1; 1969, c. 249.)

Revision of Article.—Session Laws 1969, c. 249 repealed the former article, consisting of eight sections, and substituted the present sixteen sections therefor. The former article was codified from Session Laws 1967, c. 1111, s. 1.

§ 58-173.2. Definition of terms.—In this article, unless the context otherwise requires,

(1) "Association" means the North Carolina Insurance Underwriting Association established pursuant to the provisions of this article;

(2) "Beach area" means all of that area of the State of North Carolina south and east of the inland waterway from the South Carolina line to Fort Macon (Beaufort Inlet); thence south and east of Core, Pamlico, Roanoke and Currituck sounds to the Virginia line, being those portions of land generally known as the Outer Banks;

(3) "Commissioner" means the Commissioner of Insurance of the State of North Carolina;

(4) "Essential property insurance" means insurance against direct loss to property as defined and limited in the standard statutory fire policy and extended coverage endorsement thereon, as approved by the Commissioner;

(5) "Insurable property" means real property at fixed locations in beach areas of the State as that term is hereinafter defined or the tangible personal property located therein, but shall not include insurance on motor vehicles, farm and manufacturing risks, which property is de-

termined by the Association, after inspection and pursuant to the criteria specified in the plan of operation, to be in an insurable condition: Provided, however, any one and two family dwellings built in substantial accordance with the North Carolina Uniform Residential Building Code and any structure or building built in substantial compliance with the North Carolina Building Code, including the design-wind requirements, which is not otherwise rendered uninsurable by reason of use or occupancy, shall be an insurable risk within the meaning of this article, but neighborhood, area, location, environmental hazards beyond the control of the applicant or owner of the property shall not be considered in determining insurable condition. Provided further, that any structure commenced on or after January 1, 1970, not built in substantial compliance with the North Carolina Uniform Residential Building Code or the North Carolina Building Code, including the design-wind requirements therein, shall not be an insurable risk. The owner or applicant shall furnish with the application proof in the form of a certificate from a local building inspector, contractor, engineer or architect that the structure is built in substantial accordance with the North Carolina Uniform Residential Building Code or the North Carolina Building Code;

(6) "Net direct premiums" means gross direct premiums (excluding reinsurance assumed and ceded) written on property in this State for fire and extended coverage insurance, including the fire and extended coverage components of homeowners and commercial multiple peril package policies as computed by the Commissioner, less return premiums upon cancelled contracts, dividends paid or credited to policyholders or the unused or unabsorbed portion of premium deposits, and further excluding premiums on farm properties and manufacturing risks;

(7) "Plan of operation" means the plan of operation of the Association approved or promulgated by the Commissioner of Insurance, pursuant to the provisions of this article. (1967, c. 1111, s. 1; 1969, c. 249.)

§ **58-173.3. North Carolina Insurance Underwriting Association created.**—There is hereby created the North Carolina Insurance Underwriting Association, consisting of all insurers authorized to write and engage in writing within this State, on a direct basis, property insurance, except town and county mutual insurance associations and assessable mutual companies as authorized by G.S. 58-77 (5) b, 58-77 (5) d, and 58-77 (7) b. Every such insurer shall be a member of the Association and shall remain a member of the Association so long as the Association is in existence as a condition of its authority to continue to transact the business of insurance in this State. (1967, c. 1111, s. 1; 1969, c. 249.)

§ **58-173.4. Powers and duties of Association.**—The Association shall, pursuant to the provisions of this article and the plan of operation, and with respect to essential property insurance on insurable property, have the power on behalf of its members:

(1) To cause to be issued policies of insurance to applicants;
(2) To assume reinsurance from its members;
(3) To cede reinsurance to its members and to purchase reinsurance in behalf of its members. (1967, c. 1111, s. 1; 1969, c. 249.)

§ **58-173.5. Temporary directors of Association.**—Within ten days after April 17, 1969 the Commissioner shall appoint a temporary board of directors of this Association, which shall consist of eleven (11) representatives of members of the Association. Such temporary board of directors shall prepare and submit a plan of operation in accordance with § 58-173.7 and shall serve until the permanent board of directors shall take office in accordance with said plan of operation. (1967, c. 1111, s. 1; 1969, c. 249.)

§ 58-173.6. Each member of Association to participate in its writings, expenses, profits and losses in proportion to net direct premium of such member.—All members of the Association shall participate in its writings, expenses, profits and losses in the proportion that the net direct premium of such member written in this State during the preceding calendar year bears to the aggregate net direct premiums written in this State by all members of the Association, as certified to the Association by the Commissioner after review of annual statements, other reports and any other statistics the Commissioner shall deem necessary to provide the information herein required and which the Commissioner is hereby authorized and empowered to obtain from any member of the Association, provided, however, that a member shall annually receive credit for essential property insurance voluntarily written in the beach area and its participation in the writings in the Association shall be reduced accordingly. Each member's participation in the Association shall be determined annually in the same manner as the initial determination. Any insurer authorized to write and engage in writing any insurance, the writing of which requires such insurer to be a member of the Association, pursuant to the provisions of G.S. 58-173.3 of this article, who is authorized and engaged in writing such insurance after April 17, 1969, shall become a member of the Association on the January 1 immediately following such authorization and the determination of such insurer's participation in the Association shall be made as of the date of such membership in the same manner as for all other members of the Association. (1967, c. 1111, s. 1; 1969, c. 249.)

§ 58-173.7. Directors to submit plan of operation to Commissioner; review and approval; amendments.—Within ninety (90) days after April 17, 1969, the directors of the Association shall submit to the Commissioner for his review and approval, a proposed plan of operation. Such proposed plan shall set forth the number, qualifications, terms of office, and manner of election of the members of the board of directors, and shall grant proper credit annually to each member of the Association for essential property insurance voluntarily written in the beach area and shall provide for the efficient, economical, fair and nondiscriminatory administration of the Association and for the prompt and efficient provision of essential property insurance in the beach areas of North Carolina so as to promote orderly community development in those areas and to provide means for the adequate maintenance and improvement of the property in such areas. Such proposed plan may include a preliminary assessment of all members for initial expenses necessary to the commencement of operation; the establishment of necessary facilities; management of the Association; plan for the assessment of members to defray losses and expenses; underwriting standards; procedures for the acceptance and cession of reinsurance; procedures for determining the amounts of insurance to be provided to specific risks; time limits and procedures for processing applications for insurance and for such other provisions as may be deemed necessary by the Commissioner to carry out the purposes of this article.

The proposed plan shall be reviewed by the Commissioner and approved by him if he finds that such plan fulfills the purposes provided by G.S. 58-173.1 of this article. In the review of the proposed plan the Commissioner may, in his discretion, consult with the directors of the Association and may seek any further information which he deems necessary to his decision. If the Commissioner approves the proposed plan, he shall certify such approval to the directors and the plan shall become effective ten (10) days after such certification. If the Commissioner disapproves all or any part of the proposed plan of operation he shall return the same to the directors with his written statement for the reasons for disapproval and any recommendations he may wish to make. The directors may alter the plan in accordance with the Commissioner's recommendation or may within thirty (30) days from the date of disapproval return a new plan to the Commissioner. Should the directors fail to submit a proposed plan of operation within ninety (90) days of April 17, 1969, or a new plan which is acceptable to the Commissioner, or accept the recommendations of the Commissioner within thirty (30) days after his disapproval of the plan, the Commissioner shall promulgate and place into effect a plan of operation certifying the same to the directors of the Association. Any such plan promulgated by the Commissioner shall take effect ten (10) days after certification to the directors: Provided, however, that until a plan of operation is in effect, pursuant to the provisions of this article, any existing temporary placement facility may be continued in effect on a mandatory basis on such terms as the Commissioner may determine.

The directors of the Association may, subject to the approval of the Commissioner, amend the plan of operation at any time. The Commissioner may review the plan of operation at any time he deems expedient or prudent, but not less than once in each calendar year. After review of such plan the Commissioner may amend the plan after consultation with the directors and upon certification to the directors of such amendment. (1967, c. 1111, s. 1; 1969, c. 249.)

§ **58-173.8. Persons eligible to apply to Association for coverage; contents of application.**—(a) Any person having an insurable interest in insurable property, may, on or after the effective date of the plan of operation, be entitled to apply to the Association for such coverage and for an inspection of the property. Such application may be made on behalf of the applicant by a broker or agent authorized by him. Every such application shall be submitted on forms prescribed by the Association after consultation with the Commissioner, which application shall contain statement as to whether or not there is any unpaid premiums due from the applicant for fire insurance on the property.

The term "insurable interest" as used in this subsection shall be deemed to include any lawful and substantial economic interest in the safety or preservation of property from loss, destruction or pecuniary damage.

(b) If the Association determines that the property is insurable and that there is no unpaid premium due from the applicant for prior insurance on the property, the Association upon receipt of the premium, or such portion thereof, as is prescribed in the plan of operation, shall cause to be issued a policy of essential property insurance for a term of one (1) year. Any policy issued pursuant to the provisions of this section shall be renewed annually, upon application therefor, so long as the property meets the definition of "insurable property" set forth in G.S. 58-173.2 (5).

(c) If the Association, for any reason, denies an application and refuses to cause to be issued an insurance policy on insurable property to any applicant or takes no action on an application within the time prescribed in the plan of operation, such applicant may appeal to the Commissioner and the Commissioner, or a member of his staff designated by him, after reviewing the facts, may direct the Association to issue or cause to be issued an insurance policy to the applicant. In carrying out his duties pursuant to this section, the Commissioner may request, and the Association shall provide any information the Commissioner deems necessary to a determination concerning the reason for the denial or delay of the application. (1967, c. 1111, s. 1; 1969, c. 249.)

§ **58-173.9. Association members may cede insurance to Association.**—Any member of the Association may cede to the Association essential property insurance written on insurable property, to the extent, if any, and on the terms and conditions set forth in the plan of operation. (1967, c. 1111, s. 1; 1969, c. 249.)

§ **58-173.10. Rates, rating plans and rate rules applicable.**—The rates, rating plans and rating rules applicable to the insurance written by the Association shall be in accord with the manual rates in current usage throughout the State of North Carolina. No special surcharge (other than those presently in effect) may be applied to the fire or extended coverage rates of properties located in the beach area. (1967, c. 1111, s. 1; 1969, c. 249.)

§ 58-173.11. Appeal from acts of Association to Commissioner; appeal from Commissioner to superior court.—Any person insured pursuant to this article, or his representative, or any affected insurer, who may be aggrieved by an act, ruling or decision of the Association, may, within thirty (30) days after such ruling appeal to the Commissioner. Any hearings held by the Commissioner of Insurance pursuant to such an appeal shall be in accordance with the procedure set forth in G.S. 58-9.2: Provided, however, the Commissioner of Insurance is authorized to appoint a member of his staff as deputy commissioner for the purpose of hearing such appeals and a ruling based upon such hearing shall have the same effect as if heard by the Commissioner. All persons or insureds aggrieved by any order or decision of the Commissioner of Insurance may appeal as is provided by the provisions of G.S. 58-9.3. (1967, c. 1111, s. 1; 1969, c. 249.)

Editor's Note. — By virtue of Session Laws 1943, c. 170, "Commissioner of Insurance" has been substituted for "Insurance Commissioner" in the last two sentences of the section.

§ 58-173.12. Reports of inspection made available.—All reports of inspection performed by or on behalf of the Association shall be made available to the members of the Association, applicants, agent or broker, and the Commissioner. (1967, c. 1111, s. 1; 1969, c. 249.)

§ 58-173.13. Association and Commissioner immune from liability.—There shall be no liability on the part of and no cause of action of any nature shall arise against the Commissioner of Insurance or any of his staff, the Association or its agents or employees, or against any participating insurer, for any inspections made hereunder or any statements made in good faith by them in any reports or communications concerning risks submitted to the Association, or at any administrative hearings conducted in connection therewith under the provisions of this article. (1967, c. 1111, s. 1; 1969, c. 249.)

Editor's Note. — By virtue of Session Laws 1943, c. 170, "Commissioner of Insurance" has been substituted for "Insurance Commissioner" near the beginning of the section.

§ 58-173.14. Association to file annual report with Commissioner.—The Association shall file in the office of the Commissioner on an annual basis on or before July 1 a statement which shall summarize the transactions, conditions, operations and affairs of the Association during the preceding year. Such statement shall contain such matters and information as are prescribed by the Commissioner and shall be in such form as is approved by him. The Commissioner may at any time require the Association to furnish to him any additional information with respect to its transactions or any other matter which the Commissioner deems to be material to assist him in evaluating the operation and experience of the Association. (1967, c. 1111, s. 1; 1969, c. 249.)

§ 58-173.15. Commissioner may examine affairs of Association.—The Commissioner may from time to time make an examination into the affairs of the Association when he deems it to be prudent and in undertaking such examination he may hold a public hearing pursuant to the provisions of G.S. 58-9.2. The expenses of such examination shall be borne and paid by the Association. (1967, c. 1111, s. 1; 1969, c. 249.)

§ 58-173.16. Commissioner authorized to promulgate reasonable rules and regulations.—The Commissioner of Insurance shall have authority to make reasonable rules and regulations, not inconsistent with law, to enforce, carry out and make effective the provisions of this article. The Commissioner shall not be liable for any act or omission in connection with the administration of the duties imposed upon him by the provisions of this article. (1967, c. 1111, s. 1; 1969, c. 249.)

ARTICLE 18B.

Fair Access to Insurance Requirements.

§ **58-173.17. Purpose of article.**—It is the purpose of this article to provide a program whereby adequate basic property insurance may be made available to property owners having insurable property in urban areas of the State and to enable insurers doing business in the State to participate in the federal reinsurance provisions or Public Law 90-448, 90th Congress, August 1, 1968. It is further the purpose of this article to encourage the improvement of properties located in urban areas of the State and to arrest the decline of properties located in such areas. (1969, c. 1284.)

§ **58-173.18. Organization of underwriting association.**—All insurers licensed to write and writing property insurance in this State on a direct basis are authorized, subject to the approval and regulation by the Commissioner, to establish and maintain a FAIR Plan (Fair Access to Insurance Requirements) and to establish and maintain an underwriting association and to formulate, and from time to time, to amend the plans and articles of the association and rules and regulations in connection therewith, and to assess and share on a fair and equitable basis all expenses, income and losses incident to such FAIR Plan and underwriting association in a manner consistent with the provisions of this article and in conformity with the Urban Property Protection and Reinsurance Act of 1968. (Title XI of Housing and Urban Development Act of 1968, Public Law 90-448, 90th Congress, August 1, 1969). (1969, c. 1284.)

§ **58-173.19. Participation in association.**—Every insurer authorized to write basic property insurance in this State except town and county mutual insurance associations and assessable mutual companies as authorized by G.S. 58-77 (5) b, G.S. 58-77 (5) d and G.S. 58-77 (7) b shall be required to become and remain a member of the Plan and underwriting association and comply with the requirements thereof as a condition of its authority to transact basic property insurance business in the State of North Carolina. The premiums paid by insurers of North Carolina property to the National Insurance Development Fund for reinsurance, shall be used for the payment of losses occurring in this State and shall, to the extent not so used, be credited to the participation of such insurers in the reinsurance facility provided by this article and the federal act. (1969, c. 1284.)

§ **58-173.20. Requirements of Plan and authority of association.**—The association formed pursuant to the provisions of this article shall have authority on behalf of its members to cause to be issued basic property insurance policies, to reinsure in whole or in part, any such policies, and to cede any such reinsurance. The Plan adopted, pursuant to the provision of this article, shall provide, among other things, for the perils to be covered, the geographical areas of coverage, compensation and commissions, assessments of members, the sharing of expenses, income and losses on an equitable basis, cumulative weighted voting for the board of directors of the association, the administration of the Plan and association and any other matter necessary or convenient for the purpose of assuring fair access to insurance requirements, provided the same permits each member insurer thereof to qualify for federal insurance under the Urban Property Protection and Reinsurance Act of 1968. (1969, c. 1284.)

§ **58-173.21. Authority of Commissioner.**—(a) Within 90 days following July 2, 1969, and before August 1, 1969, the directors of the association shall submit to the Commissioner of Insurance for his review, a proposed FAIR Plan and articles of the association consistent with the provisions of this article;

(b) The FAIR Plan and articles of association shall be subject to approval by the Commissioner and shall take effect 10 days after having been approved by him. If the Commissioner disapproves all or any part of the proposed Plan and articles, the directors of the association shall within 30 days submit for review an appropriately revised Plan and articles and if the directors fail to do so, the Commissioner shall thereafter promulgate such Plan and articles not inconsistent with the provisions of this article. (1969, c. 1284.)

§ **58-173.22. Temporary directors of association.** — Within 10 days after July 2, 1969, the Commissioner shall appoint a temporary board of directors of the association, which temporary board of directors may prepare and submit a Plan of operation and articles of association in accordance with § 58-173.22. (1969, c. 1284.)

§ **58-173.23. Appeals; judicial review.**—The association shall provide reasonable means, to be approved by the Commissioner, whereby any person or insurer affected by any act or decision of the administrators of the Plan or underwriting association, may be heard in person or by authorized representative, before the governing board of the association or a designated committee. Any person or insurer aggrieved by any decision of the governing board or designated committee, may be appealed to the Commissioner within 30 days from the date of such ruling or decision. The Commissioner, after hearing held pursuant to the procedure set forth in G.S. 58-9.2, shall issue an order approving or disapproving the act or decision with respect to the matter which is the subject of appeal. The Commissioner is authorized to appoint a member of his staff as deputy commissioner for the purpose of hearing such appeals and a ruling based on such hearing shall have the same effect as if heard by the Commissioner personally. All persons or insurers or their representatives aggrieved by any order or decision of the Commissioner may appeal as provided by the provisions of G.S. 58-9.3. (1969, c. 1284.)

§ **58-173.24. Reports of inspection made available; immunity from liability.**—All reports of inspection performed by or on behalf of the association shall be made available to the members of the association, applicants and the Commissioner. There shall be no liability on the part of and no cause of action of any nature shall arise against the Commissioner, any of his staff, the association or any of its agents or employees, or against any participating insurer for any inspections made hereunder or any statements made in good faith by them in any reports or communications concerning risks submitted to the association, or at any administrative hearing conducted in connection therewith under the provisions of this article. (1969, c. 1284.)

§ **58-173.25. Riot reinsurance reimbursement fund; assessment of insurers.**—In the event it shall become necessary because of loss occasioned in this State at any time since August 1, 1968, to reimburse the Secretary of the Department of Housing and Urban Development under the provisions of section 1223(a) (1) of the Urban Property Protection and Reimbursement Act of 1968, the Commissioner of Insurance shall assess all insurers engaged in the business of writing property insurance in the State in an amount sufficient to pay any unpaid reimbursements to the Secretary of the Department of Housing and Urban Development. Provided, that the amount assessed each insurer shall be in the same proportion that the premiums earned by each such insurer in this State bears to the aggregate premiums earned in this State by all insurance companies on those lines of property insurance for which reinsurance was available in this State from the Secretary of the Department of Housing and Urban Development during the preceding calendar year. All assessments made by the Commissioner of Insurance under this section shall be payable to the Treasurer of the State of North Carolina and he shall maintain a special fund designated as the "Riot Reinsurance Reimbursement Fund." All moneys received by the Treasurer pursuant to an assessment under this section shall be deposited in such special fund.

Whenever the Commissioner of Insurance shall certify to the Governor, the Council of State and the Treasurer of the State of North Carolina that it has become necessary to reimburse the Secretary of the Department of Housing and Urban Development under the provisions of the Urban Property Protection and Reinsurance Act of 1968, because of losses occasioned in this State since August 1, 1968, the Treasurer is hereby authorized and is directed to pay such amounts certified by the Commissioner of Insurance out of the Riot Reinsurance Reimbursement Fund to an extent, not exceeding in the aggregate for any one year, five percent (5%) of the aggregate property insurance premiums earned in this State during the preceding calendar year on those lines of insurance reinsured by the Secretary of Housing and Urban Development in this State during the current year. Nothing herein shall be construed to pledge the faith and credit of the State to any obligation or obligations. (1969, c. 1284.)

Editor's Note. — By virtue of Session Laws 1943, c. 170, "Commissioner of Insurance" has been substituted for "Insurance Commissioner" throughout the section.

§ **58-173.26. Assessment; inability to pay.**—In the event any insurer fails by reason of insolvency to pay any assessment as provided herein, the amount assessed each insurer, as computed under § 58-173.25, shall be immediately recalculated excluding therefrom the insolvent insurer so that its assessment is, in effect, assumed and redistributed among the remaining insurers. Such an assessment against an insolvent insurer shall not be a charge against any special deposit fund held under the provisions of article 20 of chapter 58 for the benefit of policyholders. (1969, c. 1284.)

§ **58-173.27. Termination; outstanding obligations.**—This article shall expire on December 31, 1974, or after the expiration of the Urban Property Protection and Reimbursement Act of 1968, whichever shall first occur, except that rights and obligations incurred by the association and its members to be established pursuant to the provisions of this chapter shall not be impaired by the expiration of this article, and such association shall be continued for the purpose of performing such obligations. (1969, c. 1284.)

§ **58-173.28. Recoupment by insurers.**—Any insurer assessed under the provisions of this article may add to the premiums applicable to the lines on which the assessment is levied an amount to be approved by the Commissioner of Insurance sufficient to recover within not more than three years an amount assessed under § 58-173.25 of this article during the preceding calendar year, together with the amounts, costs and expenses reasonably attributable to such assessment and recovery thereof. Every insurer adding to the premiums of its policyholders to make a recoupment under the provisions of this section, shall keep separate records as to the costs and expenses and as to the amounts collected and shall file copies of such records with the Commissioner of Insurance in the year following such recoupment. (1969, c. 1284.)

Editor's Note. — By virtue of Session Laws 1943, c. 170, "Commissioner of Insurance" has been substituted for "Insurance Commissioner" near the end of the section.

Article 19.

Fire Insurance Policies.

§ 58-176. Fire insurance contract; standard policy provisions.

I. GENERAL CONSIDERATION.

Waiver by or Estoppel against Insurer from Act or Omission of Agent. — A waiver by, or an estoppel against, an insurer may arise from the act, conduct, omission, or knowledge of a duly authorized representative of the insurer acting within the scope of his actual or apparent authority. Northern Assur. Co. of America v. Spencer, 246 F. Supp. 730 (W.D.N.C. 1965).

Knowledge of Agent, etc.—

In the absence of fraud or collusion, and when acting within the scope of his authority, the agent's knowledge is in law the knowledge of the insurer, although not in fact communicated to the insurer. Northern Assur. Co. v. America v. Spencer, 246 F. Supp. 730 (W.D.N.C. 1965).

Description of Property Covered as Located in Building Occupied by Insured Is Authorized.—Language insuring property located in a building occupied by the insured is expressly authorized by this section. It is a material part of the contract; it cannot be ignored. Parker v. Worcester Mut. Fire Ins. Co., 264 N.C. 339, 141 S.E.2d 466 (1965).

It Means Building So Occupied When Policy Was Issued.—Where a policy insured the contents of a building occupied by the insured, it meant the building occupied by insured when the policy was issued—not elsewhere. Parker v. Worcester Mut. Fire Ins. Co., 264 N.C. 339, 141 S.E.2d 466 (1965).

Quoted in In re North Carolina Fire Ins. Rating Bureau, 2 N.C. App. 10, 162 S.E.2d 671 (1968).

Cited in Firemen's Mut. Ins. Co. v. High Point Sprinkler Co., 266 N.C. 134, 146 S.E.2d 53 (1966).

III. CERTAIN OTHER CONDITIONS.

Condition or Use of Property Provision May Be Waived.—An insurance company may waive, or be estopped to rely on, a provision or condition in a policy of insurance relating to use or condition of property. Northern Assur. Co. of America v. Spencer, 246 F. Supp. 730 (W.D.N.C. 1965).

Same—Waiver of Proof of Loss.—

An insurance company which causes or induces the insured to delay in furnishing sufficient notice and proofs of loss thereby waives such delay. Northern Assur. Co. of America v. Spencer, 246 F. Supp. 730 (W.D.N.C. 1965).

IV. LIABILITY OF INSURER IN CASE OF LOSS; SUBROGATION.

Amount Recoverable.—

The amount which the company is obligated to pay is measured not by the cost of such replacement at the inception of the policy but by the cost of such replacement at the time of the fire. In re North Carolina Fire Ins. Rating Bureau, 275 N.C. 15, 165 S.E.2d 207 (1969).

Insurer Subrogated, etc.—

In accord with original. See Dixie Fire & Cas. Co. v. Esso Standard Oil Co., 265 N.C. 121, 143 S.E.2d 279 (1965).

V. LIABILITY OF AGENT.

Apparent Authority of Employee Ordinarily Determines Extent of Agent's Liability.—One dealing with an insurance agency under ordinary circumstances need not concern himself with the extent of the authority of an employee in the agent's office who undertakes to act for the agent; the apparent authority with which such employee is clothed by the agent renders him and his principal liable regardless of the actual limits of the authority of the employee. Northern Assur. Co. of America v. Spencer, 246 F. Supp. 730 (W.D.N.C. 1965).

Article 20.

Deposits by Insurance Companies.

§ 58-182.1. Amount of deposits required of foreign or alien fidelity, surety and casualty insurance companies.

Quoted in Resolute Ins. Co. v. North Carolina, 276 F. Supp. 660 (E.D.N.C. 1967).

§ 58-184. Sale of deposits for payment of liabilities.

Injunction against Sale of Securities under This Section Denied.—See Resolute Ins. Co. v. North Carolina, 276 F. Supp. 660 (E.D.N.C. 1967), aff'd, 397 F.2d 586 (4th Cir. 1968).

SUBCHAPTER IV. LIFE INSURANCE.

Article 22.

General Regulations of Business.

§ 58-195.2. Credit life insurance defined.

Public Policy. — The long established public policy of this State prevents one who lacks a legally recognized insurable interest in the life of another from taking out and enforcing for his own benefit a policy of insurance on such other person's life. Newsome v. Prudential Ins. Co. of America, 4 N.C. App. 161, 166 S.E.2d 487 (1969).

Creditor has an insurable interest in debtor's life. Hatley v. Johnston. 265 N.C. 73, 143 S.E.2d 260 (1965).

Credit life insurance, as between the creditor and insured debtor, is collateral security. Hatley v. Johnston, 265 N.C. 73, 143 S.E.2d 260 (1965).

Credit life insurance, as between the creditor and insured debtor, is collateral security. Consequently, payment of the debt with credit life insurance, when the insured authorizes the creditor to procure the policy and pays the premium himself, is payment by the insured debtor, just as payment with any collateral security is payment by the owner thereof. Newsome v. Prudential Ins. Co. of America, 4 N.C. App. 161, 166 S.E.2d 487 (1969).

As between the creditor and the insured debtor the credit life insurance is collateral security, but this does not place the defendant insurance company in the position of a surety or in any sense render it secondarily liable on the debt. Newsome v. Prudential Ins. Co. of America, 4 N.C. App. 161, 166 S.E.2d 487 (1969).

Credit life insurance, as between the creditor and the insured debtor, is collateral security, but this does not place the insurance company in the position of a surety or in any sense render it secondarily liable on the debt, the insurance company becoming liable solely because, for a premium paid to it, it assumed the risk of the debtor's continued life and his death occurs while the insurance policy is in effect. Newsome v. Prudential Ins. Co. of America, 4 N.C. App. 161, 166 S.E.2d 487 (1969).

Payment by Such Insurance Is Payment by Debtor. — Payment of the debt with credit life insurance, when the insured authorizes the creditor to procure the policy and pays the premium himself, is payment by the insured debtor, just as payment with any collateral security is payment by the owner thereof. The presence of an assuming grantee, who has no right to change the beneficiary under the policy, and therefore no claim of ownership, should not alter that result. Hatley v. Johnston, 265 N.C. 73, 143 S.E.2d 260 (1965).

When Liability Established. — Liability of the insurer under a credit life insurance policy is established at the moment of the insured debtor's death, and payment thereafter of the debt to the creditor, thereby terminating the creditor's insurable interest in the life of the debtor, does not terminate the insurer's liability under its policy of insurance. Newsome v. Prudential Ins. Co. of America, 4 N.C. App. 161, 166 S.E.2d 487 (1969).

Insurer is liable upon its policy of credit life insurance where the creditor repossesses the mortgaged chattel subsequent to the insured debtor's death, notwithstanding the policy provided that it should terminate automatically upon repossession of the chattel, since insurer's liability under the policy became fixed when the debtor died before repossession of the chattel occurred. Newsome v. Prudential Ins. Co. of America, 4 N.C. App. 161, 166 S.E.2d 487 (1969).

Beneficiary May Sue to Enforce Terms of Contract.—North Carolina has long recognized the right of one for whose benefit a contract has been made to sue to enforce its terms, even though he is not directly a party to the contract. Newsome v. Prudential Ins. Co. of America, 4 N.C. App. 161, 166 S.E.2d 487 (1969).

Action by Debtor's Administratrix to Recover Policy Proceeds. — The fact that the insured debtor's estate is not named directly as beneficiary in a credit life insurance policy is no bar to the right of the insured's administratrix to maintain an action upon the policy, since one for whose benefit a contract has been made may sue to enforce its terms even though he is not directly a party to the contract, the credit life insurance being for the benefit of insured's estate in that the proceeds of the policy are, by contractual and statutory provision, to be applied to discharge an indebtedness of the estate. Newsome v. Prudential Ins. Co. of America, 4 N.C. App. 161, 166 S.E.2d 487 (1969).

When the debt to the creditor is satisfied subsequent to the insured debtor's death by repossession of the mortgaged chattel, the debtor's estate becomes subrogated to the rights of the creditor as beneficiary under the credit life insurance policy as against the insurer, and the debtor's administratrix may maintain an action against the insurer to recover the proceeds of the policy. Newsome v. Prudential Ins. Co. of America, 4 N.C. App. 161, 166 S.E.2d 487 (1969).

Payment of Indebtedness After Debtor's Death.—When a creditor named as beneficiary of a credit life insurance policy effects payment of its indebtedness after the death of the insured debtor by repossessing the chattel purchased by the debtor under a conditional sales contract, thereby giving up its rights in the proceeds of the policy, the credit life insurance policy becomes one for the benefit of the insured collectible by his executors or administrators. Newsome v. Prudential Ins. Co. of America, 4 N.C. App. 161, 166 S.E.2d 487 (1969).

The creditor who is named as beneficiary loses all interest in the proceeds of the policy upon payment of the indebtedness, and the policy then becomes one for the benefit of the insured, collectible by his executors or administrators. Newsome v. Prudential Ins. Co. of America, 4 N.C. App. 161, 166 S.E.2d 487 (1969).

Repossession of Chattel After Debtor's Death. — Creditor relinquished its rights in the proceeds of a credit life insurance policy when, following the death of the insured debtor, it effected payment of its indebtedness by repossession of the chattel purchased by debtor under a conditional sales contract, and the creditor could not thereafter collect and retain for its own account the proceeds of the credit life insurance policy since it no longer had an insurable interest in the life of the debtor. Newsome v. Prudential Ins. Co. of America, 4 N.C. App. 161, 166 S.E.2d 487 (1969).

§ 58-204. Insurable interest as between stockholders, partners, etc.—Where two or more persons have heretofore contracted or hereafter contract with one another for the purchase, at the death of one, by the survivor or survivors, of the stock, share or interest of the deceased in any corporation, partnership or business association of any kind, the person or persons making the contract of purchase shall be deemed to have, and are hereby declared to have, an insurable interest in the life or lives of the person or persons contracting to sell. (1941, c. 201; 1969, c. 751, s. 44.)

Editor's Note. — The 1969 amendment, effective Oct. 1, 1969, deleted "own stock or interests in the same corporation, partnership or business association and" following "persons" near the beginning of the section and inserted "in any corporation, partnership or business association of any kind" near the middle of the section.

§ 58-205. Rights of beneficiaries.

Section 58-206 is actually an amendment of this section. In re Wolfe, 249 F. Supp. 784 (M.D.N.C. 1966), commented on in 45 N.C.L. Rev. 696 (1967).

§ 58-206. Creditors deprived of benefits of life insurance policies except in cases of fraud.

Section Amendatory of § 58-205.—

This section is actually an amendment of § 58-205. In re Wolfe, 249 F. Supp. 784 (M.D.N.C. 1966), commented on in 45 N.C.L. Rev. 696 (1967).

Wives and children of bankrupts are protected from claims of the bankrupt's creditors, both during his life and at his death, if life policies are for their sole benefit. In re Wolfe, 249 F. Supp. 784 (M.D.N.C. 1966), commented on in 45 N.C.L. Rev. 696 (1967).

But Cash Surrender Value Is Not Exempt Where Beneficiary May Be Changed.—Where the insured bankrupt retained the right to change the beneficiary in policies of insurance, the cash surrender values of said policies were not exempt property under the Constitution and statutes of North Carolina, and the trustee in bankruptcy was vested with the title to said policies. In re Wolfe, 249 F. Supp. 784 (M.D.N.C. 1966), commented on in 45 N.C.L. Rev. 696 (1967).

And Trustee Is Entitled to Such Cash Surrender Value.—Trustees in bankruptcy are entitled to the cash surrender value of life policies under which the bankrupt has the power to change beneficiaries. In re Wolfe, 249 F. Supp. 784 (M.D.N.C. 1966), commented on in 45 N.C.L. Rev. 696 (1967).

§ 58-207. Notice of nonpayment of premium required before forfeiture.

Notice Is Prerequisite to Forfeiture Unless Premiums Are Payable Monthly.—Notice that any premium or premiums are in default is a prerequisite to forfeiture of the policy under this section except as to policies on which premiums are payable monthly. Wiles v. Nationwide Life Ins. Co., 334 F.2d 296 (4th Cir. 1964).

§ 58-210. Group life insurance defined.

(1) A policy issued to an employer, or to the trustee of a fund established by an employer, which employer or trustee shall be deemed the policyholder, to insure employees of the employer for the benefit of persons other than the employer, subject to the following requirements:

a. The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term "employees" shall include the employees of one or more subsidiary corporations, and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietors or partnerships if the business of the employer and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract, or otherwise. The policy may provide that the term "employees" shall include the individual proprietor or partners if the employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include retired employees. The term "employer" as used herein may be deemed to include any county, municipality, or the proper officers, as such, of any unincorporated municipality or any department, division, agency, instrumentality or subdivision of a county, unincorporated municipality or municipality. In all cases where counties, municipalities or unincorporated municipalities or any officer, agent, division, subdivision or agency of the same have heretofore entered into contracts and purchased group life insurance for their employees, such transactions, contracts and insurance and the purchase of the same is hereby approved, authorized and validated.

b. The premium for the policy shall be paid by the policyholder, either wholly from the employer's funds or funds contributed by him, or partly from such funds and partly from funds contributed by the insured employees. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured employees. A policy on which part of the premium is to be derived from funds contributed by the insured employees may be placed in force only if at least 75% of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

c. The policy must cover at least 10 employees at date of issue.

d. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or by the employer or trustee. No policy may be issued which provides insurance on any employee which together with any other insurance under any group life insurance policy or policies issued to the employer or to the trustee of a fund established in whole or in part by the employer exceeds $50,000, except that this limitation shall not apply to amounts of group permanent life insurance issued in connection with a pension or profit-sharing plan.

(3) A policy issued to a labor union, which shall be deemed the policyholder, to insure members of such union for the benefit of persons other than the union or any of its officials, representatives or agents, subject to the following requirements:

a. The members eligible for insurance under the policy shall be all of the members of the union, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the union, or both.

b. The premium for the policy shall be paid by the policyholder, either wholly from the union's funds, or partly from such funds and partly from funds contributed by the insured members specifically for their insurance. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured members specifically for their insurance. A policy on which part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force only if at least 75% of the then eligible members, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

c. The policy must cover at least 25 members at date of issue.

d. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the members or by the union. No policy may be issued which provides insurance on any union member which together with any other insurance under any group life insurance policies, issued to the union exceeds $50,000.

(4) A policy issued to the trustee of a fund established by two or more employers in the same industry or kind of business or by two or more labor unions, which trustee shall be deemed the policyholder, to insure employees of the employers or members of the unions for the benefit of persons other than the employers or the unions, subject to the following requirements:

a. The persons eligible for insurance shall be all of the employees of the employers or all of the members of the unions, or all of any class or classes thereof determined by conditions pertaining to their employment, or to memberships in the unions, or to both. The policy may provide that the term "employees" shall include the individual proprietor or partners if an employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include the trustee or the employees of the trustee, or both, if their duties are principally connected with such trusteeship. The policy may provide that the term "employees" shall include retired employees.

b. The premium for the policy shall be paid by the trustee wholly from funds contributed by the employers of the insured persons. The policy must insure all eligible persons, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

c. The policy must cover at least 100 persons at date of issue.

d. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder, employers, or unions. No policy may be issued which provides insurance on any person, which together with any other insurance under any group life insurance policy or policies issued to the employers, or any of them, or to the trustee of a fund established in whole or in part by the employers, or any of them, exceeds $50,000, except that this limitation shall not apply to amounts of group permanent life insurance issued in connection with a pension or profit-sharing plan.

(5) A policy issued to an association of persons having a common professional or business interest, which association shall be deemed the policyholder, to insure members of such association for the benefit of persons other than the association or any of its officials, representatives or agents, subject to the following requirements:

a. Such association shall have had an active existence for at least two years immediately preceding the purchase of such insurance, was formed for purposes other than procuring insurance and does not derive its funds principally from contributions of insured members toward the payment of premiums for the insurance.

b. The members eligible for insurance under the policy shall be all of the members of the association or all of any class or classes thereof determined by conditions pertaining to their employment, or the membership in the association, or both. The policy may provide that the term "members" shall include the employees of members, if their duties are principally connected with the member's business or profession.

c. The premium for the policy shall be paid by the policyholder, either wholly from the association's funds, or partly from such funds and partly from funds contributed by the insured members specifically for their insurance. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured members specifically for their insurance, nor if the Commissioner finds that the rate of such contributions will exceed the maximum rate customarily charged employees insured under like group life insurance policies issued in accordance with the provisions of subdivision (1). A policy on which part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force only if at least 75% of the then eligible members, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

d. The policy must cover at least 25 members at date of issue.

e. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the members or by the association. No policy may be issued which provides insurance on any member which together with any other insurance under any group life insurance policies issued to the association exceeds $50,000.

(1965, c. 869.)

Editor's Note.—

The 1965 amendment substituted "$50,000" for "$40,000" in paragraph d of subdivisions (1), (3) and (4), and in paragraph e of subdivision (5).

As the rest of the section was not affected by the amendment, it is not set out.

Quoted in Newsome v. Prudential Ins. Co. of America, 4 N.C. App. 161, 166 S.E.2d 487 (1969).

Cited in Clayton v. Prudential Ins. Co. of America, 4 N.C. App. 43, 165 S.E.2d 763 (1969).

§ 58-211. Group life insurance standard provisions.

This section relates to a policy of life insurance delivered in this State. Clayton v. Prudential Ins. Co. of America, 4 N.C. App. 43, 165 S.E.2d 763 (1969).

Cited in Conger v. Travelers Ins. Co., 266 N.C. 496, 146 S.E.2d 462 (1966); Newsome v. Prudential Ins. Co. of America, 4 N.C. App. 161, 166 S.E.2d 487 (1969).

§ 58-211.3. Assignment of interest in group policies and annuity contracts.—Any individual insured under a group insurance policy or group annuity contract shall have the right, unless expressly prohibited under the terms of the policy or contract of insurance, to assign to any other person his rights and benefits under the policy or contract, including, but not limited to the right to designate the beneficiary or beneficiaries and the right of conversion guaranteed by G.S. 58-211, and, subject to the provisions of the policy relating to assignments thereunder, any such assignment, made either before or after April 28, 1969, shall be valid for the purpose of vesting in the assignee all such rights and benefits so assigned. (1969, c. 319.)

ARTICLE 24.

Mutual Burial Associations.

§ 58-224.1. North Carolina Mutual Burial Association Commission; membership; election; duties.—There is hereby created the North Carolina Mutual Burial Association Commission to be composed of five members.

(1) Initial Commission.—The members of the initial Commission shall be elected and chosen as follows:

a. The North Carolina Burial Association Commissioner, the president and vice-president of the North Carolina Funeral Directors Association shall unanimously select the names of four persons who are members of said association and are mutual burial association officers. The four names so selected shall be printed on a ballot by the Commissioner and one ballot mailed to each burial association operator in the State who is or would be eligible to join said association. No burial association operator shall be entitled to more than one ballot. Each operator shall vote for two names on the ballot and shall return the ballot by posting same in the mail on or before November 15, 1967, to the Burial Association Commissioner. The two persons receiving the highest number of votes shall be deemed elected to the

Commission. The person receiving the highest number of votes shall serve for a term of five years and the person receiving the second highest number of votes shall serve for two years. If less than two or more than two persons are voted for, the ballot shall be void. The names of persons may be "written in" on the ballot. In case of a tie, the winner shall be chosen by lot, unless the two persons receiving the greatest number of votes tie, in which case both shall be deemed elected and the person to serve the five-year term on the Commission shall be chosen by lot.

b. The North Carolina Burial Association Commissioner, the president and vice-president of the Funeral Directors and Morticians Association of North Carolina shall unanimously select the names of two persons who are members of said association and are mutual burial association officers. The names of the two persons so selected shall be printed on a ballot by the Commissioner and one ballot mailed by him to each burial association operator in the State who is or would be eligible to join said association. No burial association operator shall be entitled to more than one vote. Each operator shall vote for one name on the ballot and shall return the ballot by mail by posting same on or before November 15, 1967, to the Burial Association Commissioner. The person receiving the highest number of votes shall be deemed elected to the Commission and shall serve for a term of four years. The name of a person may be "written in" on a ballot. In case of a tie vote, the winner shall be selected by lot.

c. The North Carolina Burial Association Commissioner, the president and vice-president of the North Carolina Perpetual Care Cemetery Association shall unanimously select the names of two persons who are members of said association and are perpetual care cemetery operators. The names of the two persons so selected shall be printed on a ballot by the Commissioner and one ballot mailed by him to each perpetual care cemetery operator in the State. Each operator shall vote for one name on the ballot and shall return the ballot by mail to the Commissioner by posting same on or before November 15, 1967. No operator shall be entitled to more than one vote. The name of a person may be "written in" on a ballot. The person receiving the highest number of votes shall be deemed elected to the Commission and shall serve for a term of one year. In case of a tie, the winner shall be selected by lot.

d. One member of the Commission shall be a citizen of North Carolina, who is a member of a mutual burial association authorized by this article. He shall be appointed by the Governor and shall serve for a term of three years.

e. In the event of a vacancy on the initial Commission by resignation, death, or otherwise, a successor to serve for the unexpired term shall be chosen within 90 days of the occurrence of the vacancy in the same manner as that used to elect or appoint the member of the Commission whose seat is vacant.

f. At any time between November 20, 1967 and November 25, 1967, the Burial Association Commissioner, at his office in Raleigh, shall, in the presence of the president of the North Carolina Funeral Directors Association, the president of the Funeral Directors and Morticians Association of North Carolina, and the president of the North Carolina Perpetual Care Cemetery Association, or any person by them designated in their stead, open and tabulate all ballots received pursuant to this section. The results of the election shall be mailed to any person requesting same and shall be published in at least three newspapers having, in the opinion of the Commissioner, general circulation in the area they serve.

g. All initial members of the Commission shall take office on the first Monday in December 1967, and shall serve until their successors are elected or appointed (as the case may be) and qualified.

(2) After the terms of the initial members of the Commission or their successors to serve unexpired terms, have expired, all five members of the Commission shall serve for a term of five years and shall be elected or appointed, as the case may be, as follows:

a. At least 90 days prior to the expiration of the term of the Commission member who was elected pursuant to the provisions of subdivision (1) a or (1) e, the persons who were eligible to vote under the provisions of subdivision (1) a shall nominate and elect a successor, under such rules and regulations as they shall determine, as approved by the North Carolina Burial Commission, provided that all mutual burial association operators shall be entitled to vote. The person so elected shall be certified to the Burial Association Commissioner by the president of the North Carolina Funeral Directors Association as qualifying under the requirements of subdivision (1) a.

b. At least 90 days prior to the expiration of the term of the Commission member who was elected pursuant to the provisions of subdivision (1) b or (1) e, the persons who were eligible to vote under the provisions of subdivision (1) b shall nominate and elect a successor, under such rules and regulations as they shall determine; as approved by the North Carolina Burial Commission, provided that all mutual burial operators shall be entitled to vote. The person so elected shall be certified to the Burial Association Commissioner by the president of the Funeral Directors and Morticians Association of North Carolina as qualifying under the requirement of subdivision (1) b.

c. At least 90 days prior to the expiration of the term of the Commission member who was elected pursuant to the provisions of subdivision (1) c or (1) e, the persons who were eligible to vote under the provisions of subdivision (1) c shall nominate and elect a successor under such rules and regulations as they shall determine; as approved by the North Carolina Burial Commission, provided that, all perpetual care cemetery operators in North Carolina shall be entitled to vote. The person so elected shall be certified to the Burial Association Commissioner by the president of the North Carolina Perpetual Care Cemetery Association as qualifying under the requirements of subdivision (1) c.

d. In the event that any association, entitled by the provisions of this article to representation on the North Carolina Mutual Burial Association Commission, shall fail to select by November 1 of the year of the expiring term, persons for the election to membership on the Commission, the Commissioner may declare the seat vacant and appoint, from the appropriate association, any person or persons to serve the term of the vacant seat(s).

e. Any vacancy on the Commission, other than on the initial Commission, as provided in subdivision (1) e, shall be filled by election by the appropriate organization within 90 days of the vacancy, or by appointment of the Governor, as the case may be, such election or appointment to be for the unexpired term.

f. Other than the initial Commission, no member may be elected for two successive terms.

(3) All members of the Commission, before assuming the duties of their office, shall take an oath for the faithful performance of their duties. (1967, c. 1197, s. 1.)

§ 58-224.2. Duties of Commission; meetings; Burial Commissioner; secretary.—It shall be the duty of the North Carolina Mutual Burial Commission to supervise, pursuant to this article, all burial associations authorized by this article to operate in North Carolina, to determine that such associations are operated in conformity with this article and pursuant to the rules and regulations of the Commission adopted pursuant to this article; to assist the Commissioner with prosecution of violations of this article or rules and regulations adopted pursuant thereto; to counsel with and advise the Burial Association Commissioner in the performance of his duties and to protect the interests of members of mutual burial associations.

The Burial Association Commissioner, with the consent of the Commission, and after a public hearing, may promulgate reasonable rules and regulations for the enforcement of this article and in order to carry out the intent thereof. The Commission is authorized and directed to adopt specific rules and regulations to provide for the orderly transfer of a member's benefits in merchandise and services from the official funeral director of the member's association to the official funeral director of any other mutual burial association in good standing under the provisions of this article.

The Commission shall elect its own chairman, who shall vote only when the Commission is evenly divided.

The Commission shall hold regular meetings at least twice each year, and more often if called by the Commissioner, in Raleigh, or such place in North Carolina as the Commissioner may direct. Special meetings of the Commission may also be called in Raleigh, or such other place in North Carolina as they may direct, by a majority of the Commission.

The Burial Association Commissioner shall serve as secretary of the Commission and shall keep minutes of all regular and special meetings.

All regular or special meetings of the Commission, unless a majority of the members of the Commission vote otherwise, shall be open to the public. All regular meetings shall be advertised in at least three newspapers having inter-county circulation in North Carolina.

Members of the Commission shall receive, when attending such regular or special meetings, such per diem, expense allowance and travel allowance as are allowed other commissions and boards of the State. The legal adviser to the Commission shall be entitled to actual expenses when attending regular or special meetings of the Commission held other than in Raleigh. All expenses of the Commission shall be paid from funds coming to the Commissioner pursuant to this article. (1967, c. 1197, s. 2.)

§ 58-225: Repealed by Session Laws 1967, c. 1197, s. 3.

§ 58-226. Requirements as to rules and bylaws.

Article 2. The objects and purposes for which this association is formed and the purposes for which it has been organized, and the methods and plan of operation of any association already organized, shall be to provide a plan for each member of this association for the payment of one funeral benefit for each member, which benefit shall consist of a funeral in merchandise and service, with no free embalming or free ambulance service included in such benefits; and in no case shall any cash be paid. No other free service or any other thing free shall be held out, promised or furnished, in any case. Such funeral benefit shall be in the amount of one hundred dollars ($100.00) of merchandise and service, without free embalming or free ambulance service, for persons of the age of 10 years and over, or in the amount of fifty dollars ($50.00) for persons under the age of 10 years; provided, however, that any member of any association may purchase a double benefit (for a total benefit of two hundred dollars ($200.00)); however, any additional benefit shall be based on the assessment rate, as provided in article 6 of this section, at the attained age of applicant at the time the double benefit takes effect. The purchase of a double benefit shall not be available to any member who cannot fulfill the requirements as set forth in article 3 of this section, excluding the payment of the twenty-five cents (25¢) membership fee. Any funeral director who sells or promotes the sale of a membership shall provide a funeral at a cost of the face amount of the policy, or give credit in the amount of the face value on such funeral as may be selected by the family of the member of the association.

Article 4. The annual meeting of the association shall be held at .... (here insert the place, date and hour); each member shall have one vote at said annual meeting and fifteen members of the association shall constitute a quorum. There shall be elected at the annual meeting of said association a board of directors of seven members, each of whom shall serve for a period of from one to five years as the membership may determine and until his or her successor shall have been elected and qualified. Any member of the board of directors who shall fail to maintain his or her membership, as provided in the rules and bylaws of said association, shall cease to be a member of the board of directors and a director shall be appointed by the president of said association for the unexpired term of such disqualified member. There shall be at least an annual meeting of the board of directors, and such meeting shall be held immediately following the annual meeting of the membership of the association. The directors of the association may, by a majority vote, hold other meetings of which notice shall be given to each member by mailing such notice five days before the meeting to be held. At the annual meetings of the directors of the association, the board of directors shall elect a president, a vice-president, and a secretary-treasurer. The president and vice-president shall be elected from among the directors, but the secretary-treasurer may be selected from the director membership or from the membership of the association, it being provided that it is not necessary that the secretary-treasurer shall be a member of the board of directors. Among other duties that the secretary-treasurer may perform, he shall be chargeable with keeping an accurate and faithful roll of the membership of this association at all times and he shall be chargeable with the duty of faithfully preserving and faithfully applying all moneys coming into his hands by virtue of his said office. The president, vice-president and secretary-treasurer shall constitute a board of control who shall direct the affairs of the association in accordance with these articles and the bylaws of the association, and subject to such modification as may be made or authorized by an act of the General Assembly. The secretary-treasurer shall keep a record of all assessments made, dues collected and benefits paid. The books of the association, together with all records and bank accounts shall be at all times open to the inspection of the Burial Association Commissioner or his duly constituted auditors or representatives. It shall be the duty of the secretary or secretary-treasurer of each association to keep the books of the association posted up-to-date so that the financial standing of the association may be readily ascertained by the Burial Association Commissioner or any auditor or representative employed by him. Upon the failure of any secretary or secretary-treasurer to comply with this provision, it shall be the duty of the Burial Association Commissioner to take charge of the books of the association and do whatever work is necessary to bring the books up-to-date. The actual costs of said work may be charged the burial association and shall be paid from the thirty percent (30%) allowed by law for the operation of the burial association.

Whenever in the opinion of the Burial Association Commissioner, it is necessary to audit the books of any burial association more than three times in any calendar year, the Burial Association Commission shall have authority to assess such burial association the actual cost of any audit in excess of three per calendar year, provided that no more than three audits may be deemed necessary unless a discrepancy exists at the last regular audit. Such cost shall be paid from the thirty percent (30%) allowed by law for the operation of the burial association.

Every burial association shall file with the Burial Commission an annual report of its financial condition on a form furnished to it by the Burial Commissioner. Such report shall be filed on or before February 15 of each calendar year and shall cover the complete financial condition of the burial association for the immediate preceding calendar year. The Burial Association Commission may levy and collect a penalty of twenty-five dollars ($25.00) for each day after February 15 that the report called for herein is not filed. The Commission may, in its discretion, grant any reasonable extension of the above filing date without the penalty provided in this section. Such penalty shall be paid from the thirty percent (30%) allowed by law for the operation of the burial association. Any secretary or secretary-treasurer who fails to file such financial report on or before February 15 of each calendar year shall be guilty of a misdemeanor and shall be punished by a fine of not in excess of one hundred dollars ($100.00) and imprisoned for not in excess of 30 days, or both fined and imprisoned. Each day after February 15 that said report is not filed by the secretary or secretary-treasurer of a burial association, shall constitute a separate offense.

Article 11. Assessments shall be made as provided in G.S. 58-237.1. Whenever possible, assessments will be made at definitely stated intervals so as to reduce the cost of collection and to prevent lapse.

(1967, c. 1197, s. 4; 1969, c. 1041, ss. 2, 3.)

Editor's Note.—

The 1967 amendment substituted for the former fourth sentence in article 2 the proviso at the end of the third sentence and the present fourth and fifth sentences in the article.

The 1969 amendment substituted the present last two sentences of the first paragraph of article 4 for the former last three sentences of that paragraph, added the second and third paragraphs of article 4 and rewrote article 11.

As the rest of the section was not changed by the amendments, only articles 2, 4 and 11 are set out.

§ **58-228. Assessments against associations for expenses of Burial Commissioner.**—In order to meet the expenses of the supervision of the burial associations, the Burial Association Commissioner shall prorate the amount of supervisory costs over and above any other funds in his hands for this purpose and assess each association on a pro rata basis in accordance with the number of members of each association, which total assessment shall, in the aggregate, amount to eighty per centum (80%) of the total budget of the Burial Association Commissioner as approved by the Director of the Budget and the Advisory Budget Commission; provided that, said total assessment shall not exceed sixty-eight thousand dollars ($68,000.00). Each burial association shall remit to the Burial Association Commissioner its pro rata part of the assessment, which expense shall be included in the thirty per centum (30%) expense allowance as provided in article 13 of G.S. 58-226. This assessment shall be made on the first day of July of each and every year and said assessment shall be paid within 30 days thereafter. If any association shall fail or refuse to pay such assessment within 30 days, the Burial Association Commissioner is authorized to transfer all memberships and assets of every kind and description to the nearest next association that is found by the Burial Association Commissioner to be in good sound financial condition. (1941, c. 130, s. 6; 1943, c. 272, s. 3; 1945, c. 125, s. 3; 1947, c.

100, s. 3; 1949, c. 201, s. 4; 1951, c. 901, s. 1; 1955, c. 259, ss. 1, 2; 1967, c. 985, s. 1; 1969, c. 1006, s. 2.)

Editor's Note.—

The 1967 amendment rewrote the first sentence, added the second sentence, and rewrote the last sentence.

The 1969 amendment, effective July 1, 1969, increased the maximum total assessment from $56,000 to $68,000.

§ **58-229.3. Unclaimed funds of defunct burial association.** — Any funds on deposit in any bank or other financial institution in this State in the name of any burial association that is no longer in operation and has no members shall be transferred to the office of the State Burial Commissioner for the operation of such office and the purposes provided in G.S. 58-228. (1969, c. 1083.)

§ **58-235. Free services; failure to make proper assessments, etc., made a misdemeanor.**—Any person or persons who offer free funeral services or free embalming, free ambulance service or any other thing free of charge, acting for any burial association, directly or indirectly, or who so acting shall in any way fail to assess for the amount needed to pay death losses and allowable expenses, shall be guilty of a misdemeanor and upon conviction shall be fined not less than two hundred fifty dollars ($250.00) or imprisoned for not less than 12 months, or both, in the discretion of the court. (1941, c. 130, s. 13; 1967, c. 1197, s. 5.)

Editor's Note. — The 1967 amendment rewrote this section.

§ **58-237. Bond of secretary or secretary-treasurer of burial associations.**—The secretary or secretary-treasurer of each burial association shall, before entering upon the duties of his office, and for the faithful performance thereof, execute a bond payable to the Burial Commissioner as trustee for the burial association in some bonding company licensed to do business in this State, to be approved by the Burial Association Commissioner. Said bond shall be in an amount not less than one thousand dollars ($1,000) nor more than ten thousand dollars ($10,000), in the discretion of the Commissioner, for those associations whose assets, as determined by the Commissioner's audit, are ten thousand dollars ($10,000) or less. For those associations whose assets, as determined by the Commissioner's audit, are in excess of ten thousand dollars ($10,000), said bond shall be in an amount of ten thousand dollars ($10,000) plus twenty-five per centum (25%) of all assets over ten thousand dollars ($10,000); provided however, that the bond required by this section shall not in any event exceed fifty thousand dollars ($50,000). If any association operates a branch or subsidiary and the officers of both associations are the same, for purposes of this section, it shall be treated as one association. Any burial association, with the consent of the Burial Association Commissioner, may give a bond secured by a deed of trust on real estate situated in North Carolina, in lieu of procuring said bond from a bonding company. The bond thus given shall not be acceptable in excess of the ad valorem tax value for the current year of the real estate securing said bond. The deed of trust shall be recorded in the county or counties wherein the land lies and shall be deposited with the Burial Association Commissioner, name the Commissioner as trustee for the burial association and must constitute a first lien on the property secured by the deed of trust. Said deed of trust shall contain a description of the encumbered property by metes and bounds together with evidence by title insurance policy or by certificate of an attorney at law, certifying that said trustor is the owner of a marketable fee simple title to such lands. (1941, c. 130, s. 15; 1943, c. 272, s. 5; 1967, c. 985 s. 2.)

Editor's Note.—

The 1967 amendment rewrote the section.

§ 58-237.1. Surplus required; assessments.—Each burial association shall have at all times a surplus of at least three dollars ($3.00) per member. For the purpose of determining such surplus, advanced assessments, unpaid death benefits and other unpaid expenses shall be included as liabilities at time of determining such surplus.

The Burial Commission shall order any burial association that has a surplus of less than three dollars ($3.00) per member, as determined by the last audit made by the Commissioner's office of a burial association's books or by the annual statement filed by an association, to immediately increase its assessments of its members, the number of such increase in assessments to be in the Commission's discretion, provided that no association, unless its death loss requires, shall be ordered to make more than 12 single assessments per year. When the surplus of any association so ordered shall reach three dollars ($3.00) per member, the Burial Commission may, in its discretion, decrease the number of assessments of such association so as to, as near as possible, maintain a surplus of three dollars ($3.00) per member.

Any burial association, with the prior approval of the Burial Commission, may maintain a surplus of over three dollars ($3.00) per member. (1943, c. 272, s. 6; 1969, c. 1041, s. 1.)

Editor's Note. — The 1969 amendment rewrote this section.

SUBCHAPTER V. AUTOMOBILE LIABILITY INSURANCE.

Article 25.

Regulation of Automobile Liability Insurance Rates.

§ 58-246. North Carolina Automobile Rate Administrative Office created; objects and functions; hearings on rates.

(5) The Bureau shall maintain and furnish to the Commissioner of Insurance on an annual basis the statistics on income derived by member companies from the investment of unearned premium reserves on automobile liability policies written in this State. Whenever the Bureau has propounded a rate under this article, it shall prepare a separate exhibit for the experience years in question showing the combined earnings realized from the investment of such unearned premium reserves on policies written in this State. The Commissioner may require further information as to such earnings and may require calculations of the Bureau bearing on such earnings. (1939, c. 394, s. 1; 1945, c. 381, s. 2; 1947, cc. 1068, 1073; 1953, c. 674, s. 1; 1969, c. 1252, s. 1.)

Editor's Note.—

The 1969 amendment, applicable to all private passenger automobile liability rates made on or after Sept. 1, 1969, added subdivision (5).

By virtue of Session Laws 1943, c. 170, "Commissioner of Insurance" has been substituted for "Insurance Commissioner" near the beginning of subdivision (5).

As the rest of the section was not changed by the amendment, only subdivision (5) is set out.

For note discussing compulsory rating bureaus and the antitrust laws, see 54 N.C.L. Rev. 481 (1967).

Cited in Allstate Ins. Co. v. Lanier, 361 F.2d 870 (4th Cir. 1966).

§ 58-247. Membership as a prerequisite for writing insurance; governing committee; rules and regulations; expenses; Commissioner of Insurance ex officio chairman.

Section Is Not in Conflict with Federal Laws.—This section and § 58-248.2 are not in conflict with the McCarran-Ferguson Act (15 U.S.C. §§ 1011-1015) and the Sherman Anti-Trust Act (15 U.S.C. §§ 1-7). Allstate Ins. Co. v. Lanier, 242 F. Supp. 73 (E.D.N.C. 1965).

For note discussing compulsory rating

bureaus and the antitrust laws, see 54 N.C.L. Rev. 481 (1967).

Bureau Is Body Apart from State but Answerable to Commissioner.—The rating bureau is a body separate and apart from the State in that it is composed of private citizens as to its employees and governing committee, but it is also answerable to the Commissioner at every turn. If it does not give the Commissioner the answers he demands, then he is free to act in his own right and as he "sees fit." Allstate Ins. Co. v. Lanier, 242 F. Supp. 73 (E.D.N.C. 1965).

§ 58-248. Personnel and assistants; general manager; submission of rate proposals to Commissioner of Insurance; approval or disapproval.—In order to carry into effect the objects of §§ 58-246 to 58-248, the bureau members shall immediately elect its governing committee who shall employ and fix the salaries of such personnel and assistants as are necessary, but the general manager of the Compensation Rating and Inspection Bureau of North Carolina shall be the general manager also of the North Carolina Automobile Rate Administrative Office and the Commissioner of Insurance is hereby authorized to compel the production of all books, data, papers and records and any other data necessary to compile statistics for the purpose of determining the pure cost and expense loading of automobile bodily injury and property damage insurance in North Carolina and this information shall be available and for the use of the North Carolina Automobile Rate Administrative Office for the capitulation and promulgation of rates on automobile bodily injury and property damage insurance. All such rates compiled and promulgated by such Bureau shall be submitted to the Commissioner of Insurance for approval and no such rates shall be put into effect in this State until approved by the Commissioner of Insurance and not subsequently disapproved. The Commissioner of Insurance in considering any rate compiled and promulgated by the Bureau may take into consideration the earnings of all companies writing automobile liability insurance in this State realized from the investment of unearned premium reserves on policies written in this State. The amount of earnings may in an equitable manner be included in the rate-making formula to arrive at a fair and equitable rate.

On or before July 1 of each calendar year the North Carolina Automobile Rate Administrative Office shall submit to the Commissioner the data hereinabove referred to for bodily injury and property damage insurance on private passenger vehicles and a rate review based on such data. Such rate proposals shall be approved or disapproved by the Commissioner in writing within ninety (90) days after submission to him: Provided, the Commissioner shall have at least thirty (30) days after the completion of hearings and the receipt of any additional data requested from the North Carolina Automobile Rate Administrative Office in which to consider the rate proposals.

The provisions of G.S. 58-246 to 58-248 shall not apply to publicly owned vehicles except ambulances and rescue squad vehicles which are owned or operated by a county or municipality. (1939, c. 394, s. 3; 1945, c. 381, s. 2; 1965, c. 943; 1969, c. 744, s. 1; c. 1252, s. 2.)

Editor's Note.—

The 1965 amendment, effective Jan. 1, 1966, deleted a former proviso at the end of the first paragraph and reinstated it as the present third paragraph. It also added the second paragraph.

The first 1969 amendment added to the last paragraph the exception as to ambulances and rescue squad vehicles.

The second 1969 amendment, applicable to all private passenger automobile liability rates made on or after Sept. 1, 1969, added the last two sentences in the first paragraph of the section as set out above. The amendatory act directed that the two sentences be added "at the end of the paragraph," without specifying the paragraph intended.

By virtue of Session Laws 1943, c. 170, "Commissioner of Insurance" has been substituted for "Insurance Commissioner" in the next-to-last sentence of the first paragraph.

For note discussing compulsory rating bureaus and the antitrust laws, see 54 N.C.L. Rev. 481 (1967).

Quoted in Allstate Ins. Co. v. Lanier, 242 F. Supp. 73 (E.D.N.C. 1965).

§ 58-248.1. Order of Commissioner revising improper rates, classifications and classification assignments.

It is the duty of the Commissioner to hold hearings prior to revising rates, and this is a two-edged sword. Not only may the voluntary members of the rating bureau present their contentions, but the independents may likewise present their contentions. Allstate Ins. Co. v. Lanier, 242 F. Supp. 73 (E.D.N.C. 1965).

Anyone who is aggrieved can protest any determinations made by the rating bureau. This is clearly recourse outside the controls of the rating bureau, and is indeed a valuable weapon because the protest is carried to an elected official of the State who must, in turn, answer to the electorate. Allstate Ins. Co. v. Lanier, 242 F. Supp. 73 (E.D.N.C. 1965).

§ 58-248.2. Insurance policy must conform to rates, etc., filed by rating bureau; when higher rate allowed.

Section Is Not in Conflict with Federal Laws.—This section and § 58-247 are not in conflict with the McCarran-Ferguson Act (15 U.S.C. §§ 1011-1015) and the Sherman Anti-Trust Act (15 U.S.C. §§ 1-7). Allstate Ins. Co. v. Lanier, 242 F. Supp. 73 (E.D.N.C. 1965).

This article is not invalid on the ground that it restricts competition by prohibiting the offering of lower premium rates than those made and filed by the rating bureau in violation of the Sherman Act, 15 U.S.C. §§ 1-7 (1958), and the McCarran-Ferguson Act, 15 U.S.C. §§ 1011-1015 (1958). Since the rating bureau is established and administered under the active supervision of the State, it is not subject to attack under the federal antitrust laws, which condemn only private noncompetitive activities. Allstate Ins. Co. v. Lanier, 361 F.2d 870 (4th Cir. 1966).

Now All Insurers Must Belong to Bureau and Charge Same Rates.—The 1961 amendment to this section resulted in the requirement that all insurers in this State must not only be members of the rating bureau, but that they must also charge the same uniform and minimum rates for all insurance of the same kind. Allstate Ins. Co. v. Lanier, 242 F. Supp. 73 (E.D.N.C. (1965).

Or Be Subject to Penalties.—Any insurer failing to comply with the requirements of this section would be subject to a revocation or suspension of its license to do business and might also be subject to criminal sanctions. Allstate Ins. Co. v. Lanier, 242 F. Supp. 73 (E.D.N.C. 1965).

But They May Compete by Offering Greater Dividends.—All forms of deviation from the standards set by the rating bureau are not foreclosed to insurers. On the contrary, they have the privilege of continuing to compete for customers by offering, among other things, greater dividends than other competing insurance carriers. This is the form of competition selected by the legislature as compatible with the automobile liability insurance statutes of the State. Allstate Ins. Co. v. Lanier, 242 F. Supp. 73 (E.D.N.C. 1965).

§ 58-248.3. Revocation or suspension of license for violation of article.

Quoted in Allstate Ins. Co. v. Lanier, 242 F. Supp. 73 (E.D.N.C. 1965).

§ 58-248.4. Punishment for violation of article.

Quoted in Allstate Ins. Co. v. Lanier, 242 F. Supp. 73 (E.D.N.C. 1965).

§ 58-248.5. Review of order of Commissioner.

Quoted in Allstate Ins. Co. v. Lanier, 242 F. Supp. 73 (E.D.N.C. 1965).

§ 58-248.6. Appeal to Commissioner from decision of bureau.

Bureau Is Body Apart from State but Subject to Commissioner.—It is a fact that the rating bureau is a body separate and apart from the State in that it is composed of private citizens as to its employees and governing committee, but it is also answerable to the Commissioner at every turn. If it does not give the Commissioner the answers he demands then he is free to act in his own right and as he "sees fit." Allstate Ins Co. v. Lanier, 242 F. Supp. 73 (E.D.N.C. 1965).

Anyone Aggrieved Can Protest Its Determinations. — Anyone who is aggrieved can protest any determinations made by the rating bureau. This is clearly recourse outside the controls of the rating bureau, and is indeed a valuable weapon because the protest is carried to an elected official of the State who must, in turn, answer to the electorate. Allstate Ins. Co. v. Lanier, 242 F. Supp. 73 (E.D.N.C. 1965).

§ 58-248.8. Rates to distinguish between safe and nonsafe drivers.—The Commissioner of Insurance, in the manner prescribed by article 25 of subchapter V of chapter 58 of the General Statutes, is directed to establish a Safe Driver Reward Plan which adequately and factually distinguishes between classes of drivers having safe-driving records and those having a record of chargeable accidents, a record of convictions of major traffic violations; a record of a series of minor traffic violations; or a combination thereof.

Whenever any policy issued pursuant to the provisions of G.S. 20-279.21, loses the safe driver discount provided by the plan adopted pursuant to this section, or the same is surcharged due to an accumulation of points under the safe driver reward plan, the insurer shall, prior to the billing for additional premium or simultaneously therewith, inform the named insured of the surcharge or loss of discount by mailing to such insured a notice which shall state a valid basis for the surcharge or loss of discount, and which shall advise that upon receipt of a written request from the named insured it will promptly mail to the named insured a statement of the amount of increased premium attributable to the surcharge or loss of discount.

Such explanation shall be privileged, and shall not constitute grounds for any cause of action against the insurer or its representatives or any firm, person, or corporation who furnishes to the insurer the information upon which its reasons are based. (1957, c. 1393, s. 11; 1961, c. 1006, s. 2; 1963, c. 1144; 1967, c. 283; 1969, c. 989, s. 1.)

Editor's Note.—

The 1967 amendment, effective Jan. 1, 1968, substituted "a record of convictions of major traffic violations; a record of a series of minor traffic violations; or a combination thereof" for "convictions of major traffic violations" at the end of the first paragraph and deleted the former second and third paragraphs, relating to the assignment of points for various charges or traffic violations and accidents.

The 1969 amendment added the second and third paragraphs.

Session Laws 1969, c. 989, s. 3, provides: "This act shall be effective January 1, 1970, and shall have application to any surcharging or loss of discount of automobile policies after such date."

Cited in Allstate Ins. Co. v. Lanier, 361 F.2d 870 (4th Cir. 1966).

SUBCHAPTER VI. ACCIDENT AND HEALTH INSURANCE.

ARTICLE 26.

Nature of Policies.

§ 58-251.3. Policy coverage to continue as to mentally retarded or physically handicapped children.—An individual accident and health insurance policy, hospital service policy, or medical service plan policy, delivered or issued for delivery in this State after July 1, 1969, which provides that coverage of a dependent child shall terminate upon attainment of the limiting age for dependent children specified in the policy or contract, shall also provide in substance that attainment of such limiting age shall not operate or terminate the coverage of such child while the child is and continues to be (i) incapable of self-sustaining employment by reason of mental retardation or physical handicap; and (ii) chiefly dependent upon the policyholder or subscriber for support and maintenance: Provided, proof of such incapacity and dependency is furnished to the insurer, hospital service plan corporation, or medical service plan corporation by the policyholder or subscriber within 31 days of the child's attainment of the limiting age and subsequently as may be required by the insurer or corporation, but not more frequently than annually after the child's attainment of the limiting age. (1969, c. 745, s. 1.)

Editor's Note.—Session Laws 1969, c. 745, s. 2, provides: "This act shall apply to medical service plan policies and hospital service plan policies issued under provisions of chapter 57 as fully as the same applies to accident and health policies issued under chapter 58 of the General Statutes."

ARTICLE 26A.

Joint Action to Insure Elderly.

§ 58-254.11. Joint action to insure persons 65 years of age or over and their spouses permitted; associations of insurers; individual and group policies.—Notwithstanding any other provisions of this chapter or any other law which may be inconsistent herewith, any insurer may join with one or more other insurers to plan, develop, underwrite, offer, sell and provide to or for any resident person of this State, or of another state if permitted by the laws of such other state, who is 65 years of age or over and to the spouse of such person, insurance against financial loss from accident or sickness, or both. Such insurance may also cover an employer's nonresident employees and nonresident retired employees sixty-five years of age or older and their spouses, provided such employees are regularly employed within this State or were so employed at the time of their retirement. Such insurance may be offered, issued and administered through an association of two or more insurers which association is formed for the purpose of offering, selling, issuing and administering such insurance, and may be in the form of a policy insuring a resident who is 65 years of age or older, and the spouse of such resident, if any, or in the form of a group policy insuring residents 65 years of age or older and the spouses of such residents, or in both forms. On such insurance each insurer shall be severally liable for a percentage of the risks determined under the articles of association of the association. The insurer members of such association may agree with respect to premium rates, policy provisions, commission rates and other matters within the scope of this article. Notwithstanding the provisions of G.S. 58-44, any policy providing such insurance may be executed on behalf of the insurers or the association, as the case may be, by a duly authorized person and need not be countersigned by a resident agent. (1963, c. 1125; 1965, c. 677.)

Editor's Note.—The 1965 amendment inserted the present second sentence.

ARTICLE 27.

General Regulations.

§ 58-260. Discrimination forbidden; right to choose services of optometrist, podiatrist, dentist or chiropractor.—Discrimination between individuals of the same class in the amount of premiums or rates charged for any policy of insurance covered by this subchapter, or in the benefits payable thereon, or in any of the terms or conditions of such policy, or in any other manner whatsoever, is prohibited.

Whenever any policy of insurance governed by this chapter provides for payment of or reimbursement for any service which is within the scope of practice of a duly licensed optometrist, or a duly licensed podiatrist, or a duly licensed dentist, or a duly licensed chiropractor, the insured or other persons entitled to benefits under such policy shall be entitled to payment of or reimbursement for such services, whether such services be performed by a duly licensed physician or a duly licensed optometrist, or a duly licensed podiatrist, or a duly licensed dentist or a duly licensed chiropractor, notwithstanding any provision contained in such policy. The policyholder, insured, or beneficiary shall have the right to choose the provider of such services notwithstanding any provision to the contrary in any other statute. (1913, c. 91, s. 11; C. S., s. 6488; 1965, c. 396, s. 2; c. 1169, s. 2; 1967, c. 690, s. 2; 1969, c. 679.)

Editor's Note. — The first 1965 amendment, effective July 1, 1965, added the second paragraph. Section 4 of the act provides that it shall not be construed to equate optometrists with physicians except to the extent that each must be duly licensed.

The second 1965 amendment, effective Jan. 1, 1966, inserted "or a duly licensed dentist" twice in the second paragraph. Section 4 of the act provides that the right to payment or reimbursement notwithstanding any provision to the contrary contained in any plan or policy shall be applicable only to those plans and policies entered into, issued, or renewed after the effective date of the act, there being no legislative intent to impair or enlarge obligations under any existing contracts.

The 1967 amendment, effective July 1, 1967, inserted "or a duly licensed podiatrist" in two places in the first sentence of the second paragraph.

Session Laws 1967, c. 690, s. 4, provides: "Nothing in this act shall be construed to equate podiatrists with physicians except to the extent that each must be duly licensed."

The 1969 amendment inserted "or a duly licensed chiropractor" in two places in the first sentence of the second paragraph.

Article 27A.

Health Insurance Advisory Board.

§ 58-262.2. Membership of Board; appointment; terms; Commissioner of Insurance ex officio member.

(2) The term of office of the members of said Board shall be as follows: Three public members and two industry members shall be appointed for original two-year terms commencing September 15, 1967. Two public members and two industry members shall be appointed for original four-year terms commencing September 15, 1967; thereafter, all appointments shall be for terms of four years: Provided, however, each member may continue in office into the new term until his successor is appointed. No member shall by appointment or by continuance in office serve more than two consecutive four-year terms.

(1967, c. 634, s. 1.)

Editor's Note.—The 1967 amendment rewrote subdivision (2).

As the rest of the section was not changed by the amendment, it is not set out.

Section 3, c. 634, Session Laws 1967, provides that the act shall apply to terms of office commencing Sept. 15, 1967, and thereafter.

SUBCHAPTER VII. FRATERNAL ORDERS AND SOCIETIES.

Article 28.

Fraternal Orders.

§ 58-267. Meetings of governing body; principal office.—Any such society or order incorporated and organized under the laws of this State may provide for the meeting of its supreme legislative or governing body in any other state, province, or territory wherein such society has subordinate lodges, and all business transacted at such meetings is as valid in all respects as if the meetings were held in this State; but the principal business office of such society shall always be kept in this State. (1899, c. 54, s. 91; Rev., s. 4797; 1913, c. 46; C. S., s. 6494; 1969, c. 1279.)

Editor's Note. — The 1969 amendment deleted the former second sentence, relating to separation of races.

§ 58-291. Certain societies not included.—Nothing contained in this article shall be construed to affect or apply to societies which limit their membership to any one hazardous occupation, nor to an association of local lodges of a society now doing business in this State which provides death benefits not exceeding five hundred dollars to any one person, provided, that the Commissioner of Insurance, upon investigation, may, in his discretion, authorize the payment of death benefits not exceeding fifteen hundred dollars ($1500.00) to any one person, or disability benefits not exceeding three hundred dollars in any one year to any one person, or both, nor to any contracts of reinsurance business on such plan in this State, nor to domestic societies which limit their membership to the employees of a particular city or town, designated firm, business house, or corporation, nor to domestic lodges, orders, or associations of a purely religious, charitable, and benevolent description, which do not provide for a death benefit of more than one hundred dollars, or for disability benefits of more than one hundred and fifty dollars to any one person in any one year. The Commissioner of Insurance may require from any society such information as will enable him to determine whether such society is exempt from the provisions of this article. (1913, c. 89, s. 26; C. S., s. 6518; 1925, c. 70, s. 2; 1967, c. 977.)

Editor's Note.—The 1967 amendment inserted the proviso that follows "five hundred dollars to any one person" near the beginning of the section.

Chapter 59.

Partnership.

ARTICLE 1.

Uniform Limited Partnership Act.

§ 59-2. Formation.—(a) Two or more persons desiring to form a limited partnership shall

(1) Sign and swear to a certificate, which shall state
  a. The name of the partnership,
  b. The character of the business,
  c. The location of the principal place of business,
  d. The name and place of residence of each member; general and limited partners being respectively designated,
  e. The term for which the partnership is to exist,
  f. The amount of cash and a description of and the agreed value of the other property contributed by each limited partner,
  g. The additional contributions, if any, agree to be made by each limited partner and the times at which or events on the happening of which they shall be made,
  h. The time, if agreed upon, when the contribution of each limited partner is to be returned,
  i. The share of the profits or the other compensation by way of income which each limited partner shall receive by reason of his contribution.
  j. The right, if given, of a limited partner to substitute an assignee as contributor in his place, and the terms and conditions of the substitution,
  k. The right, if given, of the partners to admit additional limited partners,
  l. The right, if given, of one or more of the limited partners to priority over other limited partners, as to contributions or as

to compensation by way of income, and the nature of such priority,

m. The right, if given, of the remaining general partner or partners to continue the business on the death, retirement or insanity of a general partner, and

n. The right, if given, of a limited partner to demand and receive property other than cash in return for his contribution.

(2) File for record the certificate in the office of the register of deeds of the county where the principal place of business is located according to the statement in such certificate.

(b) A limited partnership is formed if there has been substantial compliance in good faith with the requirements of subsection (a). (1941, c. 251, s. 2; 1953, c. 1190, s. 4; 1967, c. 823, s. 26.)

Cross Reference.—See Editor's note to § 53-5.

Editor's Note.—

The 1967 amendment, effective Jan. 1, 1968, substituted "register of deeds" for "clerk of the superior court" in subdivision (2) of subsection (a).

§ 59-25. Requirements for amendment and for cancellation of certificate.

(d) If the court finds that the petitioner has a right to have the writing executed by a person who refuses to do so, it shall order the register of deeds in the office where the certificate is recorded to record the cancellation or amendment of the certificate; and where the certificate is to be amended, the court shall also cause to be filed for record in said office a certified copy of its decree setting forth the amendment.

(e) A certificate is amended or canceled when there is filed for record in the office of the register of deeds where the certificate is recorded

(1) A writing in accordance with the provisions of subsection (a), or (b) or

(2) A certified copy of the order of court in accordance with the provisions of subsection (d).

(1967, c. 823, s. 27.)

Cross Reference.—See Editor's note to § 53-5.

Editor's Note. — The 1967 amendment, effective Jan. 1, 1968, substituted "register of deeds" for "clerk of the superior court" in subsections (d) and (e).

As the rest of the section was not changed by the amendment, only subsections (d) and (e) are set out.

ARTICLE 2.

Uniform Partnership Act.

Part 2. Nature of a Partnership.

§ 59-36. Partnership defined.

A partnership may be formed by an oral agreement. Campbell v. Miller, 274 N.C. 143, 161 S.E.2d 546 (1968).

A partnership is a partnership at will unless some agreement to the contrary can be proved. Campbell v. Miller, 274 N.C. 143, 161 S.E.2d 546 (1968).

Part 3. Relations of Partners to Persons Dealing with the Partnership.

§ 59-39. Partner agent of partnership as to partnership business.

Liability on Contract Signed for Partnership by Unauthorized Partner.— Where a contract, apparently made for the purpose of carrying on partnership business, is executed in the partnership name by a partner, the partnership is liable for a breach of the contract, even though the partner was not authorized to so contract, unless the other parties to the contract had notice of the lack of authority. Brewer v. Elks, 260 N.C. 470, 133 S.E.2d 159 (1963).

§ 59-45. Nature of partner's liability.

Quoted in Brewer v. Elks, 260 N.C. 470, 133 S.E.2d 159 (1963).

Part 4. Relations of Partners to One Another.

§ 59-52. Right to an account.

Cited in Campbell v. Miller, 274 N.C. 143, 161 S.E.2d 546 (1968).

Part 5. Property Rights of a Partner.

§ 59-55. Nature of a partner's right in specific partnership property.

Editor's Note.—For article on joint ownership of corporate securities in North Carolina, see 44 N.C.L. Rev. 290 (1966).

Part 6. Dissolution and Winding Up.

§ 59-60. Partnership not terminated by dissolution.

Stated in Campbell v. Miller, 274 N.C. 143, 161 S.E.2d 546 (1968).

§ 59-61. Causes of dissolution.

The significance of a partnership being one at will, i.e., without any definite term or undertaking to be accomplished, is that the termination by the election of a partner is not a breach of contract. Having the legal right to terminate, it would seem that there is no liability for its exercise whatever the motive, and whatever may be the injurious consequences to copartners who have neglected to protect themselves by an agreement to continue for a definite term. Campbell v. Miller, 274 N.C. 143, 161 S.E.2d 546 (1968).

Death of Partner.—

In the absence of an express agreement to the contrary, every partnership is dissolved by the death of one of the partners. Bennett v. Anson Bank & Trust Co., 265 N.C. 148, 143 S.E.2d 312 (1965).

Distinction between Partnership for Indefinite Period and One for Specified Term as Concerns Dissolution. — According to the majority view, the only difference, so far as concerns the rights of dissolution by one partner, between a partnership for an indefinite period and one for a specified term is that in the case of a partnership for a definite term a dissolution before the expiration of the stipulated time is a breach of agreement which subjects such partner to a claim for damages for breach of contract if the dissolution is not justified, whereas the dissolution of a partnership at will affords the other partner no ground for complaint; in either case the action of one partner actually dissolves the partnership. Campbell v. Miller, 274 N.C. 143, 161 S.E.2d 546 (1968).

§ 59-70. Rules for distribution.

Determination of Liabilities Is Contemplated in Receivership Proceedings.—When a partner seeks a dissolution of a partnership and, with the consent of the other partners, a receiver is appointed to take possession of partnership assets for distribution to the parties entitled thereto, the law contemplates a judicial determination of the liabilities of the partnership. Brewer v. Elks, 260 N.C. 470, 133 S.E.2d 159 (1963).

No Distribution to Partners Until Such Determination Made.—Until the liabilities of the partnership have been determined, there can be no distribution to the partners. Brewer v. Elks, 260 N.C. 470, 133 S.E.2d 159 (1963).

When Judgment Recoverable against Individual Partners. — Where the partnership assets are insufficient to discharge the partnership obligations, claimant may, in the proceedings in which a receiver was appointed, have judgment against the individual partners for the balance of his claim. Brewer v. Elks, 260 N.C. 470, 133 S.E.2d 159 (1963).

ARTICLE 3.

Surviving Partners.

§ 59-82. Surviving partner to account and settle.

Cited in Bennett v. Anson Bank & Trust Co., 265 N.C. 148, 143 S.E.2d 312 (1965).

Chapter 62.

Public Utilities.

Article 3.

Powers and Duties of Utilities Commission.

Sec.
62-50. Safety standards for interstate and intrastate natural gas pipelines.
62-51. To inspect books and records of corporations affiliated with public utilities.

Article 4.

Procedure Before the Commission.

62-82. Special procedure on application for certificate for generating facility; appeal from award order.

Article 5.

Review and Enforcement of Orders.

62-91. Appeal docketed; title on appeal; priorities on appeal.
62-99. [Repealed.]

Article 6.

The Utility Franchise.

62-110.1. Certificate for construction of generating facility.
62-110.2. Electric service areas outside of municipalities.
62-112. Effective date, suspension and revocation of franchises; dormant motor carrier franchises.

Article 6A.

Radio Common Carriers.

Sec.
62-119. Powers of Commission generally; definitions.
62-120. Certificate of convenience and necessity required; exceptions; rules and regulations.
62-121. Issuance of certificate for carrier licensed by Federal Communications Commission.
62-122. Commission may set and regulate rates.
62-123. Granting of certificate for operation in established service area of another carrier.
62-124. Article not applicable to mobile radio telephone service.

Article 12.

Motor Carriers.

62-281. Safety regulations applicable to interstate common carrier vehicles.

Article 15.

Penalties and Actions.

62-319. Riding on train unlawfully; venue.
62-326. Furnishing false information to the Commission; withholding information from the Commission.

ARTICLE 1.

General Provisions.

§ 62-1. Short title.

Applied in S & R Auto & Truck Serv., Inc. v. City of Charlotte, 268 N.C. 374, 150 S.E.2d 743 (1966).

Cited in North Carolina Util. Comm'n v. United States, 253 F. Supp. 930 (E.D.N.C. 1966).

§ 62-2. Declaration of policy.

Cross Reference.—See note to § 62-118.

There is no public policy condemning competition as such in the field of public utilities; the public policy only condemns unfair or destructive competition. State ex rel. North Carolina Util. Comm'n v. Carolina Coach Co., 261 N.C. 384, 134 S.E.2d 689 (1964).

Transportation of passengers by motor carriers for compensation is a business affected with a public interest. State ex rel. North Carolina Util. Comm'n v. Carolina

Coach Co., 261 N.C. 384, 134 S.E.2d 689 (1964).

Interconnection with Competitor Cannot Be Required.—There is no provision in this chapter which requires, or authorizes the Commission to require, a utility, with large investments in its own plant and facilities, to permit interconnection with such plant and facilities by a competitor in order to increase the competitor's opportunity to take away its customers or prospective customers. State ex rel. Utilities Comm'n v. Carolina Tel. & Tel. Co., 267 N.C. 257, 148 S.E.2d 100 (1966).

Cited in State ex rel. Utilities Comm'n v. Union Elec. Membership Corp., 3 N.C. App. 309, 164 S.E.2d 889 (1968).

§ 62-3. Definitions.

(8) "Contract carrier by motor vehicle" means any person which, under an individual contract or agreement with another person and with such additional persons as may be approved by the Utilities Commission, engages in the transportation other than the transportation referred to in subdivision (7) of this section, by motor vehicle of persons or property in intrastate commerce for compensation, except as exempted in G.S. 62-260.

(9) "Contract carrier" means any person which under an individual contract or agreement with another person and with such additional persons as may be approved by the Utilities Commission, engages in the transportation of persons or property for compensation, except as exempted in G.S. 62-260.

(1967, c. 1094, ss. 1, 2.)

Editor's Note. — The 1967 amendment, effective Sept. 30, 1967, substituted "under an individual contract or agreement with another person and with such additional persons as may be approved by the Utilities Commission" for "under individual contracts or agreements" in subdivisions (8) and (9).

As the rest of the section was not affected by the amendment, it is not set out.

Definitions Are Not Controlling Where Terms Are Used Elsewhere.—The definitions of "public utility" and "franchise" as contained in this section are not controlling in determining whether an agreement of a municipality constitutes a franchise or a license, since the definitions of the statute do not purport to be authoritative definitions of those terms as used elsewhere. Shaw v. City of Asheville, 269 N.C. 90, 152 S.E.2d 139 (1967).

"Franchise" Generally Is Not Limited as in This Section.—The term "franchise," as used by the courts and by text writers, is not limited to a special right granted to a public utility, as it is defined in this section. Shaw v. City of Asheville, 269 N.C. 90, 152 S.E.2d 139 (1967).

And "Public Utility" under § 160-2 Need Not Meet Definition of This Section.—The status of the grantee is a material factor in determining the validity of a grant of a franchise under the authority of § 160-2, for that statute authorizes municipal corporations to grant franchises only to "public utilities," though it does not necessarily follow that such grantee must be the operator of a business within the definition of "public utility" contained in this section. Kornegay v. City of Raleigh, 269 N.C. 155, 152 S.E 2d 186 (1967).

Definition of "Public Utility" Cannot Be Expanded. — Neither the Commission nor the Supreme Court has authority to add to the types of business defined by the legislature as public utilities. State ex rel. Utilities Comm'n v. Carolina Tel. & Tel. Co., 267 N.C. 257, 148 S.E.2d 100 (1966).

If Applicant Is Not "Public Utility," Issuance of Certificate Is Nullity.—If an applicant's proposed service is not within the definition of "public utility" contained in subdivision (23) of this section, the issuance of a certificate of public convenience and necessity by the Commission to the applicant would be a nullity. It would not supply a basis for a further order conferring upon the applicant a right which may be granted only to a public utility. State ex rel. Utilities Comm'n v. Carolina Tel. & Tel. Co., 267 N.C. 257, 148 S.E.2d 100 (1966).

Service Up to Capacity Is Service to "Public".—One offers service to the 'public" within the meaning of subparagraph 6 of paragraph a of subdivision (23) when he holds himself out as willing to serve all who apply up to the capacity of his facilities. It is immaterial, in this connection, that his service is limited to a specified area and his facilities are limited in capacity.

State ex rel. Utilities Comm'n v. Carolina Tel. & Tel. Co., 267 N.C. 257, 148 S.E.2d 100 (1966).

What Constitutes a Contract Carrier.— See State ex rel. Utilities Comm'n v. Petroleum Transp., Inc., 2 N.C. App. 566, 163 S.E.2d 526 (1968).

Telephone Answering or Message Relaying Service Not a "Public Utility".— Neither a telephone answering nor a message relaying service is a public utility within the purview of subdivision (23) and cannot therefore be determinative upon the question of whether an applicant's proposed telephone service is substantially the same as that of the existing franchise holder. State ex rel. Utilities Comm'n v. Two Way Radio Serv., Inc., 272 N.C. 591, 158 S.E.2d 855 (1968).

A mobile radio service falls clearly within the definition of "public utility" in subparagraph 6 of paragraph a of subdivision (23). State ex rel. Utilities Comm'n v. Carolina Tel. & Tel. Co., 267 N.C. 257, 148 S.E.2d 100 (1966).

Municipal corporations are specifically excluded from the definition of a "public utility" in subdivision (23) of this section; consequently, a municipal corporation distributing and selling electric energy to its inhabitants, and to others in its vicinity, is not subject to regulation by the North Carolina Utilities Commission, and the provisions of this chapter do not apply to it, except as otherwise expressly stated therein. Dale v. City of Morganton, 270 N.C. 567, 155 S.E.2d 136 (1967).

Stated in State ex rel. Utilities Comm'n v. Atlantic Coast Line R.R., 268 N.C. 242, 150 S.E.2d 386 (1966).

ARTICLE 2.

Organization of Utilities Commission.

§ 62-10. Number, appointment and terms of commissioners; chairman; vacancies; compensation; practice of law prohibited. — The North Carolina Utilities Commission shall consist of five commissioners who shall be appointed by the Governor. The terms of the commissioners now serving shall expire at the conclusion of the term for which they were appointed. The appointments to fill the term expiring on July 1, 1963, and the two terms expiring July 1, 1965, shall be for eight (8) years, and the appointments to fill the two terms expiring July 1, 1967, shall be for two (2) years, and thereafter for eight (8) years, with two regular eight-year terms expiring on July 1 of each fourth year after July 1, 1965, and the fifth term expiring on July 1 of each eighth year after July 1, 1963. The term of office of utilities commissioners thereafter shall be eight (8) years, commencing on July 1 of the year in which the predecessor term expired, and ending on July 1 of the eighth year thereafter. A commissioner in office shall continue to serve until his successor is duly appointed and qualifies but such hold over shall not affect the expiration date of such succeeding term. On July 1, 1963, one of the commissioners shall be designated by the Governor to serve as chairman of the Commission until July 1, 1965, and on July 1, 1965, and every four (4) years thereafter, one of the commissioners shall be designated by the Governor to serve as chairman of the Commission for the succeeding four (4) years and until his successor is appointed and qualifies. In case of death, incapacity, resignation or vacancy for any other reason in the office of any commissioner or the chairman prior to the expiration of his term of office or the time for which he was designated as chairman, his successor shall be appointed by the Governor to fill the unexpired term. The salary of each commissioner shall be the same as that fixed from time to time for the judges of the superior court except that the commissioner designated as chairman shall receive one thousand dollars ($1,000.00) additional per annum. The prohibition of the practice of law by judges provided in G.S. 7-59 shall also apply to members of the Commission. (1941, c. 97, s. 2; 1949, c. 1009, s. 1; 1959, c. 1319; 1963, c. 1165, s. 1; 1967, c. 1238.)

Editor's Note.—

The 1967 amendment, effective July 1, 1967, substituted "judges of the superior court" for "highest paid member of the Council of State" in the eighth sentence.

§ 62-20. Assistant attorney general and staff attorneys assigned to Utilities Commission; to represent public; employment of additional attorneys, expert witnesses, office and clerical help.

Applied in State ex rel. North Carolina Util. Comm'n v. Old Fort Finishing Plant, 264 N.C. 416, 142 S.E.2d 8 (1965).

ARTICLE 3.

Powers and Duties of Utilities Commission.

§ 62-30. General powers of Commission.

Cited in State ex rel. Utilities Comm'n v. Union Elec. Membership Corp., 3 N.C. App. 309, 164 S.E.2d 889 (1968).

§ 62-31. Power to make and enforce rules and regulations for public utilities.

Cited in State ex rel. North Carolina Util. Comm'n v. Carolina Coach Co., 261 N.C. 384, 134 S.E.2d 689 (1964); State ex rel. Utilities Comm'n v. Union Elec. Membership Corp., 3 N.C. App. 309, 164 S.E.2d 889 (1968).

§ 62-32. Supervisory powers; rates and service. — (a) Under the rules herein prescribed and subject to the limitations hereinafter set forth, the Commission shall have general supervision over the rates charged and service rendered by all public utilities in this State.

(b) The Commission is hereby vested with all power necessary to require and compel any public utility to provide and furnish to the citizens of this State reasonable service of the kind it undertakes to furnish and fix and regulate the reasonable rates and charges to be made for such service. (1913, c. 127, s. 7; C. S., s. 1112(b); 1933, c. 134, s. 3; 1937, c. 108, s. 2; 1941, cc. 59, 97; 1959, c. 639, s. 12; 1963, c. 1165, s. 1.)

I. GENERAL CONSIDERATION.

Cross References.—

See note to § 62-118.

Editor's Note.—This section is set out to correct a typographical error in the historical citation as it appears in the replacement volume.

For note on control of public utilities through zoning ordinances, see 42 N.C. L. Rev. 761 (1964).

Cited in State ex rel. Utilities Comm'n v. Nello L. Teer Co., 266 N.C. 366, 146 S.E.2d 511 (1966); State ex rel. Utilities Comm'n v. Two Way Radio Serv., Inc., 272 N.C. 591, 158 S.E.2d 855 (1968); State ex rel. Utilities Comm'n v. Union Elec. Membership Corp., 3 N.C. App. 309, 164 S.E.2d 889 (1968).

§ 62-42. Compelling efficient service, extensions of services and facilities, additions and improvements.

(c) For the purpose of this section, "public utility" shall include any electric membership corporation operating within this State. (1933, c. 307, s. 10; 1949, c 1029, s. 2; 1963, c. 1165, s. 1; 1965, c. 287, s. 6.)

Editor's Note. — The 1965 amendment added subsection (c).

As only subsection (c) was affected by the amendment, the rest of the section is not set out.

Cited in State ex rel. Utilities Comm'n v. Two Way Radio Serv., Inc., 272 N.C. 591, 158 S.E.2d 855 (1968); State ex rel. Utilities Comm'n v. Union Elec. Membership Corp., 3 N.C. App. 309, 164 S.E.2d 889 (1968).

§ 62-44. Commission may require continuous telephone lines.

Statutes Requiring Interconnection with Competitor Should Not Be Extended beyond Plain Meaning.—The power to require the proprietor of a business to interconnect its facilities with those of a competitor is a drastic power. Statutes conferring it should not be extended beyond their plain meaning. State ex rel. Utilities

Comm'n v. Carolina Tel. & Tel. Co., 267 N.C. 257, 148 S.E.2d 100 (1966).

Interconnection with Competitor to Increase Its Share of Business Cannot Be Compelled.—There is no provision in this chapter which requires, or authorizes the Commission to require, a utility, with large investments in its own plant and facilities, to permit interconnection with such plant and facilities by a competitor in order to increase the competitor's opportunity to take away its customers or prospective customers. State ex rel. Utilities Comm'n v. Carolina Tel. & Tel. Co., 267 N.C. 257, 148 S.E.2d 100 (1966).

Section Authorizes Requirement of Interconnection Only When One Company Cannot Serve Localities.—This section authorizes the Commission to require a connection of the lines of two telephone companies, but only when they serve localities which cannot be communicated with by the lines of one of them alone. State ex rel. Utilities Comm'n v. Carolina Tel. & Tel. Co., 267 N.C. 257, 148 S.E.2d 100 (1966).

It Does Not Authorize Compelling Telephone Company to Interconnect with Radio Company Serving Same Area.—This section may not reasonably be extended by construction to authorize the Commission to compel a telephone company to interconnect its system with the system of a radio company serving the identical area which the telephone company, itself, serves or desires to serve. State ex rel. Utilities Comm'n v. Carolina Tel. & Tel. Co., 267 N.C. 257, 148 S.E.2d 100 (1966).

Mobile Radio Service Company Is Not "Telephone or Telegraph Utility".—Even if the record is sufficient to support an order granting an applicant a certificate of public convenience and necessity to act as a common carrier of communications providing mobile radio service, the Commission has no statutory authority to require a telephone utility to interconnect the applicant's radio communications system with the utility's land telephone system. If permitted to render such service, the applicant would not be a "telephone or telegraph utility," though it would be a public utility conveying or transmitting messages by "other means of transmission," namely, radio. State ex rel. Utilities Comm'n v. Carolina Tel. & Tel. Co., 267 N.C. 257, 148 S.E.2d 100 (1966).

§ **62-49. Publication of utilities laws.**—The Commission is authorized and directed to secure publication of all North Carolina laws affecting public utilities, together with the Commission rules and regulations, in an annotated edition, and the Commission may adopt rules for distribution of said publication, and shall publish biennial supplements to said utilities laws containing all amendments and additions thereto, and may republish said laws at such times as may be reasonable and necessary. (1963, c. 1165, s. 1; 1967, c. 1133.)

Editor's Note.—

The 1967 amendment rewrote this section.

Cited in State ex rel. Utilities Comm'n v. Petroleum Transp., Inc., 2 N.C. App. 566, 163 S.E.2d 526 (1968).

§ **62-50. Safety standards for interstate and intrastate natural gas pipelines.**—(a) The safety standards of this chapter shall apply to the North Carolina portion of interstate natural gas pipelines extending to, from, within or through this State in interstate commerce to the same extent as said safety provisions apply to intrastate natural gas pipelines of natural gas utility companies and pipeline carriers operating under a franchise from the Utilities Commission. The Commission may require that interstate natural gas companies and interstate natural gas pipeline carriers operating interstate natural gas pipelines in this State and all intrastate natural gas utilities shall file with the Commission reports of all accidents occurring in connection with the operation of all natural gas pipelines located in North Carolina and to file with the Commission copies of its construction, operation and maintenance standards and procedures, and any amendments thereto, and such other information as may be necessary to show compliance with the safety standards promulgated by the Commission hereunder. Where the Commission has reason to believe that any interstate natural gas company or any intrastate natural gas utility is not in compliance with the Commission's safety standards, the Commission may, after notice and hearing, order said interstate natural gas company or intrastate natural gas utility, to take such measures as may be necessary to comply with such standards. The Commission is authorized to require said interstate natural gas pipeline companies or carriers and intrastate natural gas utilities to furnish engineering reports showing that said pipelines are in safe operating condition and are being operated in conformity with the Commission's safety standards.

(b) The Commission is hereby authorized to enter into agreements with the United States Department of Transportation and other federal agencies and with other states or public utilities commissions of other states for the regulation of natural gas pipelines located within the State of North Carolina and upon the execution of such cooperative agreements, the Commission is authorized to utilize Commission personnel for inspection, investigation, and regulation of safety standards for interstate and intrastate natural gas pipelines in North Carolina, and to share in the cost of such regulation with other agencies having duties with respect to the regulation of said natural gas pipelines, and to receive funds from the United States Department of Transportation for such regulation.

(c) The Utilities Commission is hereby authorized to enter into cooperative agreements for inspection of all natural gas pipelines of North Carolina to the end that the Utilities Commission may enter into agreements with the United States Department of Transportation or other federal or state agencies to regulate and inspect the safety standards for all natural gas pipelines in the State of North Carolina, including interstate natural gas pipelines.

(d) Any person who violates any provision of this section, or any regulation of the Utilities Commission issued thereunder, shall be subject to a civil penalty not to exceed one thousand dollars ($1,000.00) for each violation for each day that the violation persists, the maximum civil penalty not to exceed two hundred thousand dollars ($200,000.00) for any continuing violation.

(e) Any action for civil penalty or any claim for said penalty may be compromised by the Utilities Commission and settled for an agreed amount. In determining the amount of the penalty imposed in civil action, or the amount agreed upon in compromise, the amount of the penalty shall be considered in relation to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after any prior notification of a violation. The amount of the penalty, when finally determined in a civil action, or the amount agreed upon in compromise, may be deducted from any sums owing by the State to the person charged, or may be collected as in the case of any judgment in a civil action in the State courts. (1967, c. 1134, s. 1; 1969, c. 646.)

Editor's Note.—Session Laws 1967, c. 1134, s. 3, makes this section effective Jan. 1, 1968.

The 1969 amendment, effective Sept. 15, 1969, designated the former provisions of this section as subsection (a) and added subsections (b), (c), (d) and (e).

§ **62-51. To inspect books and records of corporations affiliated with public utilities.**—The Utilities Commission and its employees are hereby authorized to inspect the books and records of corporations affiliated with public utilities regulated by the Utilities Commission under the provisions of this chapter, including parent corporations and subsidiaries of parent corporations. This authorization shall extend to all reasonably necessary inspection of all books and records of account and agreements and transactions between public utilities doing business in North Carolina and their affiliated corporations where such records relate either directly or indirectly to the provision of intrastate service by the utility. The right to inspect such books and records shall apply both to books and records in the State of North Carolina and such books and records located outside of the State of North Carolina. If any such affiliated corporation shall refuse to permit such inspection of its books and records and its transactions with public utilities doing business in North Carolina, the Utilities Commission is empowered to order the public utility regulated in North Carolina to show cause why it should not secure from its affiliated corporation such books and records for inspection in North Carolina or why their franchise to operate as a public utility in North Carolina should not be cancelled. (1969, c. 764, s. 1.)

Editor's Note. — Session Laws 1969, c. 764, s. 3, makes the act effective Sept. 15, 1969.

ARTICLE 4.

Procedure Before the Commission.

§ 62-60. Commission acting in judicial capacity; administering oaths and hearing evidence; decisions; quorum.

Ordinarily, the procedure, etc.—

In accord with 1st paragraph in original. See State ex rel. North Carolina Util. Comm'n v. Western Carolina Tel. Co., 260 N.C. 369, 132 S.E.2d 873 (1963).

The Commission is required by § 62-65 (a) in deciding on an application for a certificate of public convenience and necessity to apply the rules of evidence applicable in civil actions in the superior court "insofar as practicable." This section provides that the Commission shall render its decision "in the same manner as a court of record." The procedure before the Commission is, however, not as formal as that in litigation conducted in the superior court. State ex rel. Utilities Comm'n v. Carolina Tel. & Tel. Co., 267 N.C. 257, 148 S.E.2d 100 (1966).

Substance and not form, etc.—

In accord with original. See State ex rel. North Carolina Util. Comm'n v. Western Carolina Tel. Co., 260 N.C. 369, 132 S.E.2d 873 (1963).

Order in Opinion Concurred In by Majority Is Order of Commission.—Where a majority of the commissioners concurred in the order set forth in the opinion by one of them, it was the order of the Commission. State ex rel. Utilities Comm'n v. Carolina Tel. & Tel. Co., 267 N.C. 257, 148 S.E.2d 100 (1966).

And Findings of Fact Not Disagreed With in Other Opinions Are Those of Commission.—Where neither of the two concurring opinions nor the two dissenting opinions indicate any disagreement with any of the findings of fact stated in the opinion of another commissioner and the opinion of no other commissioner suggests any other findings of fact, the findings of fact so stated in the opinion of the commissioner are, therefore, concurred in by a majority, if not all of the members of the Commission, and are, therefore, the findings of the Commission. State ex rel. Utilities Comm'n v. Carolina Tel. & Tel. Co., 267 N.C. 257, 148 S.E.2d 100 (1966).

Different Reasons Given by Concurring Commissioners Are Not Grounds for Reversal.—When this section and § 62-79 (a) are construed together, as they must be, it is apparent that the General Assembly did not intend that an order of the Commission concurred in by the majority of its members, based upon findings of fact concurred in by a majority of its members, may be reversed solely because the members of the concurring majority chose different rules, or supposed rules, of law as support for their decision and order. The diversity of the reasons given by the three commissioners who join in an ultimate decision and order are not a sufficient ground for its reversal. State ex rel. Utilities Comm'n v. Carolina Tel. & Tel. Co., 267 N.C. 257, 148 S.E.2d 100 (1966).

Finding May Be Based on "Late" Exhibits.—The statutes prescribing the procedure for hearings before the Commission do not forbid it to make a finding, as to the capacity and ability of an applicant for a certificate of public convenience and necessity to serve, upon the basis of facts arising between the conclusion of the hearing and the entry of the order when those facts are shown by "late" exhibits, otherwise competent, and when the adverse party has had adequate notice that such exhibits have been filed with the Commission for inclusion in the record. State ex rel. Utilities Comm'n v. Carolina Tel. & Tel. Co., 267 N.C. 257, 148 S.E.2d 100 (1966).

§ 62-65. Rules of evidence; judicial notice.

Informality of Procedure. — The Commission is required by subsection (a) in deciding on an application for a certificate of public convenience and necessity to apply the rules of evidence applicable in civil actions in the superior court "insofar as practicable." Section 62-60 provides that the Commission shall render its decision "in the same manner as a court of record." The procedure before the Commission is, however, not as formal as that in litigation conducted in the superior court. State ex rel. Utilities Comm'n v. Carolina Tel. & Tel. Co., 267 N.C. 257, 148 S.E.2d 100 (1966).

Findings May Be Based on "Late" Exhibits.—The statutes prescribing the procedure for hearings before the Commission do not forbid it to make a finding, as to the capacity and ability of an applicant for a certificate of public convenience and necessity to serve, upon the basis of facts arising between the conclusion of the hearing and the entry of the order when those facts are shown by "late" exhibits, otherwise competent, and when the adverse party has had adequate notice that such exhibits have been filed with the Commission for inclusion in the record. State ex rel. Utilities Comm'n v. Carolina Tel. & Tel. Co., 267 N.C. 257, 148 S.E.2d 100 (1966).

Quoted in State ex rel. Utilities Comm'n v. Atlantic Coast Line R.R., 268 N.C. 242, 150 S.E.2d 386 (1966).

Cited in State ex rel. Utilities Comm'n v. Nello L. Teer Co., 266 N.C. 366, 146 S.E.2d 511 (1966).

§ 62-72. Commission may make rules of practice and procedure.

In the absence, etc.—

In accord with original. See State ex rel. North Carolina Util. Comm'n v. Western Carolina Tel. Co., 260 N.C. 369, 132 S.E.2d 873 (1963).

§ 62-73. Complaints against public utilities.

Cited in State ex rel. Utilities Comm'n v. Union Elec. Membership Corp., 3 N.C. App. 309, 164 S.E.2d 889 (1968).

§ 62-75. Burden of proof.

Plaintiff Must Prove Facts Essential to Relief.—This section imposes upon plaintiff the burden of proving the facts essential to its right to relief from the relationship of which it complains. State ex rel. Utilities Comm'n v. Nello L. Teer Co., 266 N.C. 366, 146 S.E.2d 511 (1966).

The burden is upon carriers asking for an increase in rates to prove justification for the increase and that the proposed rate is just and reasonable. State ex rel. North Carolina Util. Comm'n v. Southern Ry., 267 N.C. 317, 148 S.E.2d 210 (1966).

And Not upon Shippers or Customers.—At a hearing on a proposed increase in charges for railroad services the shippers and customers of the railroads have no burden of proving anything; the previous rates are presumed to be fair and reasonable and so are the orders of the Commission. State ex rel. North Carolina Util. Comm'n v. Southern Ry., 267 N.C. 317, 148 S.E.2d 210 (1966).

And the burden of proof is upon an applicant for a certificate of public convenience and necessity to show there is a public convenience and necessity for its proposed service. State ex rel. Utilities Comm'n v. Carolina Tel. & Tel. Co., 267 N.C. 257, 148 S.E.2d 100 (1966).

Stated in State ex rel. Utilities Comm'n v. Atlantic Coast Line R.R., 268 N.C. 242, 150 S.E.2d 386 (1966).

§ 62-79. Final orders and decisions; findings; service; compliance.

The Commission is required by this section to find all facts essential to a determination of the question at issue. State ex rel. Utilities Comm'n v. Queen City Coach Co., 4 N.C. App. 116, 166 S.E.2d 441 (1969).

Different Reasons Given by Concurring Commissioners Are Not Grounds for Reversal.—When § 62-60 and subsection (a) of this section are construed together, as they must be, it is apparent that the General Assembly did not intend that an order of the Commission concurred in by the majority of its members, based upon findings of fact concurred in by a majority of its members, may be reversed solely because the members of the concurring majority chose different rules, or supposed rules, of law as support for their decision and order. The diversity of the reasons given by the three commissioners who join in an ultimate decision and order are not a sufficient ground for its reversal. State ex rel. Utilities Comm'n v. Carolina Tel. & Tel. Co., 267 N.C. 257, 148 S.E.2d 100 (1966).

§ 62-82. Special procedure on application for certificate for generating facility; appeal from award order.—(a) Notice of Application for Certificate for Generating Facility; Hearing; Briefs and Oral Arguments.—Whenever there is filed with the Commission an application for a certificate of public convenience and necessity for the construction of a facility for the generation of electricity under G.S. 62-110.1, the Commission shall require the applicant to publish a notice thereof once a week for four successive weeks in a daily newspaper of general circulation in the county where such facility is proposed to be constructed, and thereafter the Commission, upon complaint shall, or upon its own initiative may, upon reasonable notice, enter upon a hearing to determine whether such certificate shall be awarded. Any such hearing must be commenced by the Commission not later than three (3) months after the filing of such application, and the procedure for rendering decisions therein shall be given priority over all other cases on the Commission's calendar of hearings and decisions, except rate proceedings referred to in G.S 62-81. Such applications shall be heard by the full Commission, and the Commission shall furnish a transcript of evidence and testimony submitted by the end of the second business day after the taking of each day of testimony. The Commission shall require that briefs and oral arguments in such cases be submitted within thirty (30) days after the conclusion of the hearing, and the Commission shall render its decision in such cases within sixty (60) days after submission of such briefs and arguments. If the Commission does not, upon its own initiative, order a hearing and does not receive a complaint within ten (10) days after the last day of publication of the notice the Commission shall enter an order awarding the certificate.

(b) Compensation for Damages Sustained by Appeal from Award of Certificate under § 62-110.1; Bond Prerequisite to Appeal.—Any party or parties opposing, and appealing from, an order of the Commission which awards a certificate under G.S. 62-110.1 shall be obligated to recompense the party to whom the certificate is awarded, if such award is affirmed upon appeal, for the damages, if any, which such party sustains by reason of the delay in beginning the construction of the facility which is occasioned by the appeal, such damages to be measured by the increase in the cost of such generating facility (excluding legal fees, court costs, and other expenses incurred in connection with the appeal). No appeal from any order of the Commission which awards any such certificate may be taken by any party opposing such award unless, within the time limit for filing notice of appeal as provided for in G.S. 62-90, such party shall have filed with the Commission a bond with sureties approved by the Commission, or an undertaking approved by the Commission, in such amount as the Commission determines will be reasonably sufficient to discharge the obligation hereinabove imposed upon such appealing party. The Commission may, when there are two or more such appealing parties, permit them to file a joint bond or undertaking. If the award order of the Commission is affirmed on appeal, the Commission shall determine the amount, if any, of damages sustained by the party to whom the certificate was awarded, and shall issue appropriate orders to assure that such damages be paid and, if necessary, that the bond or undertaking be enforced. (1965, c. 287, s. 3.)

ARTICLE 5.

Review and Enforcement of Orders.

§ **62-90. Right of appeal; filing of exceptions.** — (a) No party to a proceeding before the Commission may appeal from any final order or decision of the Commission unless within thirty (30) days after the entry of such final order or decision, or within such time thereafter as may be fixed by the Commission, by order made within thirty (30) days, the party aggrieved by such decision or order shall file with the Commission notice of appeal and exceptions which shall set forth specifically the ground or grounds on which the aggrieved party considers said decision or order to be unlawful, unjust, unreasonable or unwarranted, and including errors alleged to have been committed by the Commission.

(b) Any party may appeal from all or any portion of any final order or decision of the Commission in the manner herein provided. Copy of the notice of appeal shall be mailed by the appealing party at the time of filing with the Commission, to each party to the proceeding to the addresses as they appear in the files of the Commission in the proceeding. The failure of any party, other than the Commission, to be served with or to receive a copy of the notice of appeal shall not affect the validity or regularity of the appeal.

(c) The Commission may on motion of any party to the proceeding or on its own motion set the exceptions to the final order upon which such appeal is based for further hearing before the Commission.

(d) The appeal shall lie to the Court of Appeals as provided in G.S. 7A-29. The appellant shall cause to be prepared a statement of the case as required by the rules of the Court of Appeals. A copy of this statement shall be served on the Commission and all other parties, as appellees, within 45 days from the entry of the appeal taken; within 20 days after such service, the appellee shall return the copy with its approval or specified amendments endorsed or attached; if the case be approved by the appellee it shall be filed by the appellant with the Clerk of the Court of Appeals as part of the record; if not returned with objections within the time prescribed, it shall be deemed approved. The Commission shall have the power, in the exercise of its discretion, to enlarge the time in which to serve statement of case on appeal and exceptions thereto or counterstatement of case.

(e) If the case on appeal is returned by appellee with objections as prescribed, or if a countercase is served on appellant, the appellant shall immediately request the Utilities Commission to fix a time and place for meeting to agree on the case on appeal. If the appellant delays longer than 15 days after the appellee serves its countercase or exceptions to request the Commission to set a meeting to agree on the case on appeal, then the exceptions filed by the appellee shall be allowed, or the countercase served by him shall constitute the case on appeal; but the time may be extended by agreement of counsel.

(f) The Commission shall forthwith notify the attorneys of the parties to meet before it for the purpose at a certain time and place, which time shall not be more than 20 days from the receipt of the request. At the time and place stated, the Commission shall determine if all parties have agreed on a case on appeal. If they have, the appellant shall within five days thereafter file it with the Clerk of the Court of Appeals, and if he fails to do so the appellee may file its copy. If the case on appeal is not agreed upon by all parties to the appeal at said meeting, the Commission shall immediately file with the Court of Appeals a request for appointment of a referee to settle the case on appeal, whereupon the chief judge of the Court of Appeals shall appoint a referee to settle and sign the case on appeal under such rules as may be set forth in his appointment.

(g) The Court of Appeals shall hear and determine all matters arising on such appeal, as in this article provided, and may in the exercise of its discretion assign the hearing of said appeal to any panel of the Court of Appeals. (1949, c. 989, s. 1; 1955, c. 1207, s. 1; 1959, c. 639, s. 1; 1963, c. 1165, s. 1; 1967, c. 1190, s. 1.)

I. GENERAL CONSIDERATION.

Editor's Note. — The 1967 amendment, effective Oct. 1, 1967, deleted former subsections (b) and (d), redesignated former subsection (c) as present subsection (b), and added present subsections (c), (d), (e), (f), and (g).

§ 62-91. Appeal docketed; title on appeal; priorities on appeal.— Unless otherwise provided by the rules of the Court of Appeals, the cause on appeal from the Utilities Commission shall be entitled "State of North Carolina ex rel. Utilities Commission (here add any additional parties in support of the Commission Order and their capacity before the Commission), Appellee(s) v. (here insert name of appellant and his capacity before the Commission), Appellant." Appeals from the Utilities Commission pending in the superior courts on September 30, 1967, shall remain on the civil issue docket of such superior court and shall have priority over other civil actions. Appeals to the Court of Appeals under

G.S. 7A-29 shall be docketed in accordance with the rules of the Court of Appeals. (1949, c. 989, s. 1; 1963, c. 1165, s. 1; 1967, c. 1190, s. 6.)

Editor's Note. — The 1967 amendment, effective Oct. 1, 1967, rewrote this section.

§ **62-92. Parties on appeal.**—In any appeal to the Court of Appeals, the complainant in the original complaint before the Commission shall be a party to the record and each of the parties to the proceeding before the Commission shall have a right to appear and participate in said appeal. (1949, c. 989, s. 1; 1963, c. 1165, s. 1; 1967, c. 1190, s. 2.)

Editor's Note. — The 1967 amendment, effective Oct. 1, 1967, substituted "Court of Appeals" for "superior court."

§ **62-94. Record on appeal; extent of review.**—(a) On appeal the court shall review the record and the exceptions and assignments of error in accordance with the rules of the Court of Appeals, and any alleged irregularities in procedures before the Commission, not shown in the record, shall be considered under the rules of the Court of Appeals.

(b) So far as necessary to the decision and where presented, the court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning and applicability of the terms of any Commission action. The court may affirm or reverse the decision of the Commission, declare the same null and void, or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the appellants have been prejudiced because the Commission's findings, inferences, conclusions or decisions are:

(1) In violation of constitutional provisions, or
(2) In excess of statutory authority or jurisdiction of the Commission, or
(3) Made upon unlawful proceedings, or
(4) Affected by other errors of law, or
(5) Unsupported by competent, material and substantial evidence in view of the entire record as submitted, or
(6) Arbitrary or capricious.

(c) In making the foregoing determinations, the court shall review the whole record or such portions thereof as may be cited by any party and due account shall be taken of the rule of prejudicial error. The appellant shall not be permitted to rely upon any grounds for relief on appeal which were not set forth specifically in his notice of appeal filed with the Commission.

(d) The court shall also compel action of the Commission unlawfully withheld or unlawfully or unreasonably delayed.

(e) Upon any appeal, the rates fixed or any rule, regulation, finding, determination, or order made by the Commission under the provisions of this chapter shall be prima facie just and reasonable. (1949, c. 989, s. 1; 1955, c. 1207, s. 3; 1963, c. 1165, s. 1; 1969, c. 614.)

I. GENERAL CONSIDERATION.

Editor's Note.—The 1969 amendment, effective Sept. 15, 1969, rewrote subsection (a) and eliminated the former second sentence of subsection (e), relating to trial by jury.

For case law survey as to judicial review of decisions of administrative agencies, see 45 N.C.L. Rev. 816 (1967).

Subsection (b) States Authority of Court. — The authority of the court to which an appeal is taken from an order of the Utilities Commission is stated in subsection (b) of this section. State ex rel. Utilities Comm'n v. Carolina Tel. & Tel. Co., 267 N.C. 257, 148 S.E.2d 100 (1966).

Courts do not ordinarily review or reverse the exercise of discretionary power by an administrative agency such as the Utilities Commission, except on showing of capricious, unreasonable or arbitrary action or disregard of law. State ex rel.

North Carolina Util. Comm'n v. Carolina Coach Co., 261 N.C. 384, 134 S.E.2d 689 (1964).

Commission without Discretionary Power Where No Evidence to Weigh.— The weighing of the evidence and the exercise of judgment thereon within the scope of its authority are matters for the Commission; even so, the Commission has no discretionary power, where its function is to weigh the evidence and make judgment thereon, if there is no evidence to weigh. State ex rel. North Carolina Util. Comm'n v. Carolina Coach Co., 261 N.C. 384, 134 S.E.2d 689 (1964).

Determination by Commission Is, etc.— In accord with 2nd paragraph in original. See State ex rel. North Carolina Util. Comm'n v. Carolina Coach Co., 261 N.C. 384, 134 S.E.2d 689 (1964).

Upon appeal, rates fixed by the Commission shall be deemed prima facie just and reasonable. State ex rel. North Carolina Util. Comm'n v. Westco Tel. Co., 266 N.C. 450, 146 S.E.2d 487 (1966).

Commission's Findings Are Conclusive, etc.—

Findings supported by competent, material, and substantial evidence in view of the entire record are binding upon the reviewing court. State ex rel. Utilities Comm'n v. Carolina Tel. & Tel. Co., 267 N.C. 257, 148 S.E.2d 100 (1966).

It is well established that the Commission's findings of fact are conclusive and binding when supported by competent, material, and substantial evidence in view of the entire record as submitted. State ex rel. Utilities Comm'n v. Carolina Coach Co., 269 N.C. 717, 153 S.E.2d 461 (1967).

When Order Remanded to Commission for Further Hearing. — An order of the Commission based on erroneous interpretation of law should be remanded to the Commission for further hearing and not be terminated by the court, where the Commission has the duty to make a positive determination, such as the fixing of rates, and because of some error of law the determination is in suspense and the utility is entitled to have the determination made. State ex rel. North Carolina Util. Comm'n v. Carolina Coach Co., 261 N.C. 384, 134 S.E.2d 689 (1964).

Questions on appeal from the Commission must be determined upon the record certified by it. State ex rel. North Carolina Util. Comm'n v. Carolina Coach Co., 261 N.C. 384, 134 S.E.2d 689 (1964).

Unless Facts Are in Record, Commission's Expert Knowledge Cannot Be Considered. — The Commission's knowledge, however expert, cannot be considered by the Supreme Court on appeal, unless the facts embraced within that knowledge are in the record. State ex rel. North Carolina Util. Comm'n v. Carolina Coach Co., 261 N.C. 384, 134 S.E.2d 689 (1964).

In the consideration of an appeal the court is required to review the whole record, or such portions thereof as may be cited. State ex rel. Utilities Comm'n v. Nello L. Teer Co., 266 N.C. 366, 146 S.E.2d 511 (1966).

And due account shall be taken of the rule of prejudicial error in the consideration of an appeal. State ex rel. Utilities Comm'n v. Nello L. Teer Co., 266 N.C. 366, 146 S.E.2d 511 (1966).

Applied in State ex rel. North Carolina Utils. Comm'n v. Southern Ry., 267 N.C. 317, 148 S.E.2d 210 (1966).

Stated in State ex rel. Utilities Comm'n v. Atlantic Coast Line R.R., 268 N.C. 242, 150 S.E.2d 386 (1966).

Cited in State ex rel. Utilities Comm'n v. Two Way Radio Serv., Inc., 272 N.C. 591, 158 S.E.2d 855 (1968).

§ 62-95. Relief pending review on appeal. — Pending judicial review, the Commission is authorized, where it finds that justice so requires, to postpone the effective date of any action taken by it. Upon such conditions as may be required and to the extent necessary to prevent irreparable injury, a judge of the Court of Appeals is authorized to issue all necessary and appropriate process to postpone the effective date of any action by the Commission or take such action as may be necessary to preserve status or rights of any of the parties pending conclusion of the proceedings on appeal. The court may require the applicant for such stay to post adequate bond as required by the court. (1949, c. 989, s. 1; 1963, c. 1165, s. 1; 1967, c. 1190, s. 8.)

Editor's Note. — The 1967 amendment, effective Oct. 1, 1967, substituted "a judge of the Court of Appeals" for "the judge of the superior court" in the second sentence.

§ 62-96. Appeal to Supreme Court.—In all appeals heard in the Court of Appeals, any party may file a motion for review in the Supreme Court of the decision of the Court of Appeals under G.S. 7A-31, and in cases entitled to be appealed as a matter of right under G.S. 7A-30 (3) any party may appeal to the Supreme Court from the decision of the Court of Appeals under the same rules and regulations as are prescribed by law for appeals, except that the Commission, if it shall appeal, shall not be required to give any undertaking or make any deposit to assure the cost of such appeal, and such court may advance the cause on its docket. (1949, c. 989, s. 1; 1963, c. 1165, s. 1; 1967, c. 1190, s. 3.)

Editor's Note. — The 1967 amendment, effective Oct. 1, 1967, rewrote that portion of this section preceding the words "under the same rules and regulations."

When Supreme Court May Affirm Judgment Reversing Commission.—Upon an appeal to the Supreme Court from a judgment of the superior court (now the Court of Appeals), reversing a decision of the Commission and remanding the matter for further proceedings, the Supreme Court may affirm the judgment of the superior court, if the record discloses one or more of the statutory grounds for such judgment and if such ground therefor is set forth specifically in the notice of appeal from the Commission to the superior court. State ex rel. Utilities Comm'n v. Carolina Tel. & Tel. Co., 267 N.C. 257, 148 S.E.2d 100 (1966).

In order to affirm a judgment of the superior court (now the Court of Appeals) reversing and remanding a decision of the Commission, it is not required that the Supreme Court concur in the ruling by the superior court upon every ground for relief set forth in the notice of appeal from the Commission to the superior court. State ex rel. Utilities Comm'n v. Carolina Tel. & Tel. Co., 267 N.C. 257, 148 S.E.2d 100 (1966).

Applied in State ex rel. North Carolina Util. Comm'n v. Old Fort Finishing Plant, 264 N.C. 416, 142 S.E.2d 8 (1965).

§ **62-98. Peremptory mandamus to enforce order, when no appeal.** (b) An appeal shall lie to the Court of Appeals in behalf of the Commission, or the defendant, from the refusal or the granting of such peremptory mandamus. The remedy prescribed in this section for enforcement of orders of the Commission is in addition to other remedies prescribed by law. (1949, c. 989, s. 1; 1963, c. 1165, s. 1; 1967, c. 1190, s. 4.)

Editor's Note. — The 1967 amendment, effective Oct. 1, 1967, substituted "An appeal shall lie to the Court of Appeals" for "An appeal shall lie to the Supreme Court" at the beginning of the first sentence in subsection (b).

As subsection (a) was not affected by the amendment, it is not set out.

§ **62-99:** Repealed by Session Laws 1967, c. 1190, s. 5, effective October 1, 1967.

ARTICLE 6.

The Utility Franchise.

§ 62-110. Certificate of convenience and necessity.

The basis for the requirement of a certificate of public convenience and necessity, as a prerequisite to the right to serve, is the adoption, by the General Assembly, of the policy that, nothing else appearing, the public is better served by a regulated monopoly than by competing suppliers of the service. State ex rel. Utilities Comm'n v. Carolina Tel. & Tel. Co., 267 N.C 257, 148 S.E.2d 100 (1966); State ex rel. Utilities Comm'n v. Two Way Radio Serv., Inc., 272 N.C. 591, 158 S.E.2d 855 (1968).

Certificate Is Not Required If Business Is Not Public Utility.—One does not need a certificate of public convenience and necessity in order to engage in a business which is not that of a "public utility" as defined in § 62-3 (23). State ex rel. Utilities Comm'n v. Carolina Tel. & Tel. Co., 267 N.C. 257, 148 S.E.2d 100 (1966).

Nor before City Issues Franchise to Television Cable Company.—Even if a television cable company be a "public utility" as defined in § 62-3, it is not required that it obtain from the Utilities Commission a certificate of public convenience and necessity before a franchise be issued by a city to it. Shaw v. City of Asheville, 269 N.C. 90, 152 S.E.2d 139 (1967).

But It Is Required before Utility Commences Construction or Operation. — A certificate of public convenience and necessity from the Utilities Commission is required by this section before a public utility may commence construction of its plant or operation of its business. Shaw v. City of Asheville, 269 N.C. 90, 152 S.E.2d 139 (1967).

Issuance of Certificate Is Nullity If Applicant Is Not Public Utility.—If an applicant's proposed service is not within the definition of "public utility" contained in subdivision (23) of § 62-3, the issuance of a certificate of public convenience and necessity by the Commission to the applicant would be a nullity. It would not supply a basis for a further order conferring upon the applicant a right which may be granted only to a public utility. State ex rel. Utilities Comm'n v. Carolina Tel. & Tel. Co., 267 N.C. 257, 148 S.E.2d 100 (1966).

And in Excess of Commission Authority.—To grant a certificate of public convenience and necessity to conduct a business which is not a public utility, within the definition of the statute, would be both arbitrary and in excess of the statutory authority of the Commission. State ex rel. Utilities Comm'n v. Carolina Tel. & Tel. Co., 267 N.C. 257, 148 S.E.2d 100 (1966).

And Issuance Does Not Transform Ordinary Business into Public Utility.—The issuance of a certificate of public convenience and necessity by the Commission does not transform an ordinary business into a public utility, so as to entitle its operator to the rights of a public utility, or so as to impose upon him the duties and limitations of a public utility. State ex rel. Utilities Comm'n v. Carolina Tel. & Tel. Co., 267 N.C. 257, 148 S.E.2d 100 (1966).

Definition of Public Utility Cannot Be Extended. — Neither the Commission nor the Supreme Court has authority to add to the types of business defined by the legislature as public utilities. State ex rel. Utilities Comm'n v. Carolina Tel. & Tel Co., 267 N.C. 257, 148 S.E.2d 100 (1966).

Finding of Both Convenience and Public Need Is Required.—A finding by the Commission that the rendering of the proposed service by an applicant would be a convenience to the public, even if supported by competent and substantial evidence, is not adequate basis for an order granting the applicant a certificate of public convenience and necessity. To entitle the applicant to such a certificate it is, of course, not necessary for him to show, and the Commission to find, that the proposed service is necessary in the sense of being indispensable. Nevertheless, a mere showing of convenience is not sufficient. There must be an element of public need for the proposed service by the applicant in the area. State ex rel. Utilities Comm'n v. Carolina Tel. & Tel. Co., 267 N.C. 257, 148 S.E.2d 100 (1966).

The Commission is authorized to issue a certificate of public convenience and necessity if, but only if, the Commission has made findings of fact, supported by competent, material, and substantial evidence, which findings, in turn, support the conclusion that public convenience and necessity "require or will require" the proposed operation by the applicant. State ex rel. Utilities Comm'n v. Carolina Tel. & Tel. Co., 267 N.C. 257, 148 S.E.2d 100 (1966).

Certificate Will Not Be Granted to Competitor without Finding Service Will Not Be Rendered.—The requirement of a certificate of public convenience and necessity is not an absolute prohibition of competition between public utilities rendering the same service. There is, however, inherent in this requirement the concept that, once a certificate is granted which authorizes the holder to render the proposed service within the geographic area in question, a certificate will not be granted to a competitor in the absence of a showing that the utility already in the field is not rendering and cannot or will not render the specific service in question. State ex rel. Utilities Comm'n v. Carolina Tel. & Tel. Co., 267 N.C. 257, 148 S.E.2d 100 (1966); State ex rel. Utilities Comm'n v. Two Way Radio Serv., Inc., 272 N.C. 591, 158 S.E.2d 855 (1968).

Where a public utility has a certificate of convenience and necessity for telephone service in a certain area and is ready and able to provide such area a mobile radio service, the Utilities Commission should deny an application for a certificate of public convenience and necessity to an applicant who proposes to render substantially the same mobile radio service in the area, and the fact that the applicant proposes to offer an electronic personal paging service as an auxiliary to its mobile radio service is not a sufficient difference to justify the issuance of the certificate when it appears that the Commission can compel the established utility to install such a service when the public convenience so requires. State ex rel. Utilities Comm'n v. Two Way Radio Serv., Inc., 272 N.C. 591, 158 S.E.2d 855 (1968).

Services Need Not Be Identical to Give Utility Serving Area Prior Right. — Two services need not be identical in every respect in order to give the utility already serving the area the prior right. State ex rel. Utilities Comm'n v. Carolina Tel. & Tel. Co., 267 N.C. 257, 148 S.E.2d 100 (1966); State ex rel. Utilities Comm'n v. Two Way Radio Serv., Inc., 272 N.C. 591, 158 S.E.2d 855 (1968).

A certificate of public convenience and necessity authorizing its holder to render telephone service grants to the holder the right to adopt new methods of telephonic communications, including a mobile radio telephone service. State ex rel. Utilities Comm'n v. Two Way Radio Serv., Inc., 272 N.C. 591, 158 S.E.2d 855 (1968).

A certificate of public convenience and necessity, which authorizes its holder to render "telephone service," does not limit the holder to the practice of the art of telephony as it was known and practiced on the date the certificate was issued, nor to the use therein of devices, equipment and methods then in use. Obviously, it is the intent of such a certificate to authorize the holder to improve its service by adopting and using new and improved devices and methods for telephonic communication. State ex rel. Utilities Comm'n v. Two Way Radio Serv., Inc., 272 N.C. 591, 158 S.E.2d 855 (1968).

Neither a telephone answering nor a message relaying service is a public utility within the purview of § 62-3 (23) and cannot therefore be determinative upon the question of whether an applicant's proposed telephone service is substantially the same as that of the existing franchise holder. State ex rel. Utilities Comm'n v. Two Way Radio Serv., Inc., 272 N.C. 591, 158 S.E.2d 855 (1968).

§ **62-110.1. Certificate for construction of generating facility.**—(a) Notwithstanding the proviso in G.S. 62-110, no public utility or other person shall begin the construction of any steam, water, or other facility for the generation of electricity to be directly or indirectly used for the furnishing of public utility service, even though the facility be for furnishing the service already being rendered, without first obtaining from the Commission a certificate that public convenience and necessity requires, or will require, such construction.

(b) For the purpose of this section, "public utility" shall include any electric membership corporation operating within this State, and the term "public utility service" shall include the service rendered by any such electric membership corporation. (1965, c. 287, s. 2.)

§ **62-110.2. Electric service areas outside of municipalities.**—(a) As used in this section, unless the context otherwise requires, the term:

(1) "Premises" means the building, structure, or facility to which electricity is being or is to be furnished; provided, that two or more buildings, structures, or facilities which are located on one tract or contiguous tracts of land and are utilized by one electric consumer for commercial, industrial, institutional, or governmental purposes, shall together constitute one "premises," except that any such building, structure, or facility shall not, together with any other building, structure, or facility, constitute one "premises" if the electric service to it is separately metered and the charges for such service are calculated independently of charges for service to any other building, structure, or facility; and

(2) "Line" means any conductor for the distribution or transmission of electricity, other than

a. In the case of overhead construction, a conductor from the pole nearest the premises of a consumer to such premises, or a conductor from a line tap to such premises, and

b. In the case of underground construction, a conductor from the transformer (or junction point, if there be one) nearest the premises of a consumer to such premises.

(3) "Electric supplier" means any public utility furnishing electric service or any electric membership corporation.

(b) In areas outside of municipalities, electric suppliers shall have rights and be subject to restrictions as follows:

(1) Every electric supplier shall have the right to serve all premises being served by it, or to which any of its facilities for service are attached, on April 20, 1965.

(2) Every electric supplier shall have the right, subject to subdivision (4) of this subsection, to serve all premises initially requiring electric service after April 20, 1965 which are located wholly within 300 feet of such electric supplier's lines as such lines exist on April 20, 1965,

except premises which, on said date, are being served by another electric supplier or to which any of another electric supplier's facilities for service are attached.

(3) Every electric supplier shall have the right, subject to subdivision (4) of this subsection, to serve all premises initially requiring electric service after April 20, 1965 which are located wholly within 300 feet of lines that such electric supplier constructs after April 20, 1965 to serve consumers that it has the right to serve, except premises located wholly within a service area assigned to another electric supplier pursuant to subsection (c) hereof.

(4) Any premises initially requiring electric service after April 20, 1965, which are located wholly or partially within 300 feet of the lines of one electric supplier and also wholly or partially within 300 feet of the lines of another electric supplier, as each of such supplier's lines exist on April 20, 1965, or as extended to serve consumers that the supplier has the right to serve, may be served by such one of said electric suppliers which the consumer chooses, and any electric supplier not so chosen by the consumer shall not thereafter furnish service to such premises.

(5) Any premises initially requiring electric service after April 20, 1965 which are not located wholly within 300 feet of the lines of any electric supplier and are not located partially within 300 feet of the lines of two or more electric suppliers may be served by any electric supplier which the consumer chooses, unless such premises are located wholly or partially within an area assigned to an electric supplier pursuant to subsection (c) hereof, and any electric supplier not so chosen by the consumer shall not thereafter furnish service to such premises.

(6) Any premises initially requiring electric service after April 20, 1965 which are located partially within a service area assigned to one electric supplier and partially within a service area assigned to another electric supplier pursuant to subsection (c) hereof, or are located partially within a service area assigned to one electric supplier pursuant to subsection (c) hereof and partially within 300 feet of the lines of another electric supplier, as such lines exist on April 20, 1965 or as extended to serve consumers it has the right to serve, may be served by such one of said electric suppliers which the consumer chooses, and the electric supplier not so chosen shall not thereafter furnish service to such premises.

(7) Any premises initially requiring electric service after April 20, 1965 which are located only partially within a service area assigned to one electric supplier pursuant to subsection (c) hereof and are located wholly outside the service areas assigned to other electric suppliers and are located wholly more than 300 feet from other electric suppliers' lines, may be served by any electric supplier which the consumer chooses, and any electric supplier not so chosen by the consumer shall not thereafter furnish service to such premises.

(8) Every electric supplier shall have the right to serve all premises located wholly within the service area assigned to it pursuant to subsection (c) hereof.

(9) No electric supplier shall furnish temporary electric service for the construction of premises which it would not have the right to serve under this subsection if such premises were already constructed. The construction of lines for, and the furnishing of, temporary service for the construction of premises which any other electric supplier, if chosen by the consumer, would have the right to serve if such premises were

already constructed, shall not impair the right of such other electric supplier to furnish service to such premises after the construction thereof, if then chosen by the consumer; nor, unless the consumer chooses to have such premises served by the supplier which furnished the temporary service, shall the furnishing of such temporary service or the construction of a line therefor impair the right of any other electric supplier to furnish service to any other premises which, without regard to the construction of such temporary service line, it has the right to serve.

(10) No electric supplier shall furnish electric service to any premises in this State outside the limits of any incorporated city or town except as permitted by this section; provided, that nothing in this section shall restrict the right of an electric supplier to furnish electric service to itself or to exchange or interchange electric energy with, purchase electric energy from or sell electric energy to any other electric supplier.

(c) (1) In order to avoid unnecessary duplication of electric facilities, the Commission is authorized and directed to assign, as soon as practicable after January 1, 1966, to electric suppliers all areas, by adequately defined boundaries, that are outside the corporate limits of municipalities and that are more than 300 feet from the lines of all electric suppliers as such lines exist on the dates of the assignments; provided, that the Commission may leave unassigned any area in which the Commission, in its discretion, determines that the existing lines of two or more electric suppliers are in such close proximity that no substantial avoidance of duplication of facilities would be accomplished by assignment of such area. The Commission shall make assignments of areas in accordance with public convenience and necessity, considering, among other things, the location of existing lines and facilities of electric suppliers and the adequacy and dependability of the service of electric suppliers, but not considering rate differentials among electric suppliers.

(2) The Commission, upon agreement of the affected electric suppliers, is authorized to reassign to one electric supplier any area or portion thereof theretofore assigned to another; and the Commission, notwithstanding the lack of such agreement, is authorized to reassign to one electric supplier any area or portion thereof theretofore assigned to another, except premises being served by the other electric supplier or to which any of its facilities for service are attached and except such portions of such area as are within 300 feet of the other electric supplier's lines, upon finding that such reassignment is required by public convenience and necessity. In determining whether public convenience and necessity requires such reassignment, the Commission shall consider, among other things, the adequacy and dependability of the service of the affected electric suppliers, but shall not consider rate differentials between such electric suppliers.

(d) Notwithstanding the provisions of subsection (b) and (c) of this section:

(1) Any electric supplier may furnish electric service to any consumer who desires service from such electric supplier at any premises being served by another electric supplier, or at premises which another electric supplier has the right to serve pursuant to other provisions of this section, upon agreement of the affected electric suppliers; and

(2) The Commission shall have the authority and jurisdiction, after notice to all affected electric suppliers and after hearing, if a hearing is requested by any affected electric supplier or any other interested party, to order any electric supplier which may reasonably do so to furnish electric service to any consumer who desires service from such electric supplier

at any premises being served by another electric supplier, or at premises which another electric supplier has the right to serve pursuant to other provisions of this section, and to order such other electric supplier to cease and desist from furnishing electric service to such premises, upon finding that service to such consumer by the electric supplier which is then furnishing service, or which has the right to furnish service, to such premises, is or will be inadequate or undependable, or that the rates, conditions of service or service regulations, applied to such consumer, are unreasonably discriminatory.

(e) The furnishing of electric service in any area which becomes a part of any municipality after April 20, 1965, either by annexation or incorporation, (whether or not such area, or any portion thereof, shall have been assigned pursuant to subsection (c) of this section) shall be subject to the provisions of article 41 of subchapter X of chapter 160 of the General Statutes, and any provisions of this section inconsistent with said article shall not be applicable within such area after the effective date of such annexation or incorporation. (1965, c. 287, s. 5.)

Purpose.—One of the purposes of this chapter is to vest the Utilities Commission with authority and responsibility to assign territory to electric suppliers. State ex rel. Utilities Comm'n v. Union Elec. Membership Corp., 3 N.C. App. 309, 164 S.E.2d 889 (1968).

A principal purpose of this section is to provide an orderly method for allocation of service areas as among competing suppliers of electricity and thereby to eliminate unnecessary duplication of electric line facilities. State ex rel. Utilities Comm'n v. Lumbee River Elec. Membership Corp., 3 N.C. App. 318, 164 S.E.2d 895 (1968).

Another purpose of this chapter, and particularly subsection (b) of this section, is to declare certain rights of electric suppliers in areas outside of municipalities pending the assignment of territory. State ex rel. Utilities Comm'n v. Union Elec. Membership Corp., 3 N.C. App. 309, 164 S.E.2d 889 (1968).

Prior to the enactment of this section in 1965, there was no restraint upon competition in rural areas between electric membership corporations and public utility suppliers of electric power except as established by contract. State ex rel. Utilities Comm'n v. Lumbee River Elec. Membership Corp., 275 N.C. 250, 166 S.E.2d 663 (1969).

Construction.—Where provisions of this section relating to assignment of electric service territory in rural areas are clear and understandable on their face, the Supreme Court is not required to construe this statute in connection with other provisions of this chapter relating to powers of the Utilities Commission to regulate public utilities. State ex rel. Utilities Comm'n v. Lumbee River Elec. Membership Corp., 275 N.C. 250, 166 S.E.2d 663 (1969).

"Premises," as that word is defined in subsection (a) (1), embraces the manufacturing plant of an electric consumer and not the tract upon which it is located; consequently, public membership corporation had no right under subsection (b) (1) to provide electric service to a plant on the ground that it had served a residence and electric signs previously located on the tract. State ex rel. Utilities Comm'n v. Lumbee River Elec. Membership Corp., 275 N.C. 250, 166 S.E.2d 663 (1969).

The language of subsection (b) (5) is clear and unambiguous and presents no problem of construction. State ex rel. Utilities Comm'n v. Lumbee River Elec. Membership Corp., 3 N.C. App. 318, 164 S.E.2d 895 (1968).

Legislature Determines What Policy Is in Public Interest.—It is for the legislature, not for the Supreme Court or the Utilities Commission, to determine whether the policy of free competition between suppliers of electric power, or the policy of territorial monopoly, or an intermediate policy is in the public interest. State ex rel. Utilities Comm'n v. Lumbee River Elec. Membership Corp., 275 N.C. 250, 166 S.E.2d 663 (1969).

Neither Supreme Court Nor Utilities Commission May Forbid Service.—If the legislature has enacted a statute declaring the right of a supplier of electricity to serve, notwithstanding the availability of the service of another supplier closer to the customer, neither the Supreme Court nor the Utilities Commission may forbid service by such supplier merely because it will necessitate an uneconomic or unsightly duplication of transmission or distribution lines. State ex rel. Utilities Comm'n v. Lumbee River Elec. Membership Corp., 275 N.C. 250, 166 S.E.2d 663 (1969).

Authority of Utilities Commission to Restrict Competition.—The Utilities Commission is a creature of the legislature and has no authority to restrict competition between suppliers of electricity, except insofar as that authority has been conferred upon it by statute. State ex rel. Utilities Comm'n v. Lumbee River Elec. Membership Corp., 275 N.C. 250, 166 S.E.2d 663 (1969).

One seeking electric service should not be denied the right to choose between vendors unless compelled by some cogent reason. State ex rel. Utilities Comm'n v. Lumbee River Elec. Membership Corp., 275 N.C. 250, 166 S.E.2d 663 (1969).

Right of Chosen Electric Supplier to Deny Service.—Conclusion of the Utilities Commission that a consumer has the unrestricted choice of electric supplier under subsection (b) of this section is subject to the right of the chosen electric supplier to deny the service unless required by the Utilities Commission. State ex rel. Utilities Comm'n v. Union Elec. Membership Corp., 3 N.C. App. 309, 164 S.E.2d 889 (1968).

An electric membership corporation and a public utility corporation are free to compete in rural areas unless forbidden by some provision of this section. State ex rel. Utilities Comm'n v. Union Elec. Membership Corp., 3 N.C. App. 309, 164 S.E.2d 889 (1968).

Except as restricted by contract, electric membership corporations and public utility companies supplying electricity are free to compete in the rural areas of this State, notwithstanding the fact that such competition may result in substantial duplication of electric power lines and other facilities. State ex rel. Utilities Comm'n v. Lumbee River Elec. Membership Corp., 275 N.C. 250, 166 S.E.2d 663 (1969).

No Territorial Monopoly. — In the absence of a valid grant of such right by statute, or by an administrative order issued pursuant to statutory authority, and in the absence of a valid contract with its competitor or with the person to be served, a supplier of electric power, or other public utility service, has no territorial monopoly or other right to prevent its competitor from serving anyone who desires the competitor to do so. State ex rel. Utilities Comm'n v. Lumbee River Elec. Membership Corp., 275 N.C. 250, 166 S.E.2d 663 (1969).

Extension of Facilities Requires Certificate of Public Convenience and Necessity.—The police power of the State is broad enough to include a statute providing that a public utility company, desiring to serve a new area, must obtain from the Utilities Commission a certificate that public convenience and necessity requires the proposed extension of its distribution facilities. State ex rel. Utilities Comm'n v. Lumbee River Elec. Membership Corp., 275 N.C. 250, 166 S.E.2d 663 (1969).

§ 62-111. Transfers of franchises; mergers, consolidations and combinations of public utilities.

(e) The Commission shall approve applications for transfer of motor carrier franchises made under this section upon finding that said sale, assignment, pledge, transfer, change of control, lease, merger, or combination is in the public interest, will not adversely affect the service to the public under said franchise, will not unlawfully affect the service to the public by other public utilities, that the person acquiring said franchise or control thereof is fit, willing and able to perform such service to the public under said franchise, and that service under said franchise has been continuously offered to the public up to the time of filing said application or in lieu thereof that any suspension of service exceeding 30 days has been approved by the Commission as provided in G.S. 62-112 (b) (5). (1947, c. 1008, s. 22; 1949, c. 1132, s. 20; 1953, c. 1140, s. 3; 1957, c. 1152, s. 10; 1961, c. 472, ss. 6, 7; 1963, c. 1165, s. 1; 1967, c. 1202.)

Editor's Note. — The 1967 amendment, effective Sept. 30, 1967, added subsection (e).

As the rest of the section was not affected by the amendment, it is not set out.

Bond as Condition Precedent to Commission's Approval.—This section requires as a condition precedent to Commission's approval of the sale of a motor carrier's franchise a bond from the seller conditioned for the payment of (1) taxes, (2) wages due employees of the seller, (3) unremitted C.O.D. collections due seller, (4) "for loss or damage of goods transported or received for transportation," (5) overcharge on property transported, and (6) for interline accounts to other carriers. American Nat'l Fire Ins. Co. v. Gibbs, 260 N.C. 681, 133 S.E.2d 669 (1963), decided prior to effective date of 1963 amendment.

Contract to Pay Claims for Which Assured Liable under Section Is Surety Contract.—That portion of a contract under which a company obligates itself to pay any shipper or consignee claims for which the assured would be liable by provision of this section, with stipulation that the assured should reimburse the company for any such payment, is a surety contract. American Nat'l Fire Ins. Co. v. Gibbs, 260 N.C. 681, 133 S.E.2d 669 (1963).

Findings Obviating Application of Subsection (d).—In a proceeding to obtain approval of the Utilities Commission for the transfer of all the capital stock of a franchise carrier from one holding corporation to another, findings of the Commission supported by substantial evidence to the effect that the franchise carrier did not in fact obtain its franchise for the purpose of transferring it to another obviates the application of subsection (d) of this section. State ex rel. Utilities Comm'n v. Carolina Coach Co., 269 N.C. 717, 153 S.E.2d 461 (1967).

Findings Supporting Conclusion That Transfer of Stock Is Justified.—In a proceeding to obtain approval of the Utilities Commission for the transfer of all the capital stock of a franchise carrier from one holding corporation to another, findings supported by evidence that the franchise carrier was conducting active operations under the franchise and that its ability to render service to the public within the limits of its franchise rights would not be adversely affected by the proposed transfer of its stock, support conclusions that the proposed sale of its stock is justified by the public convenience and necessity within the meaning of this section. State ex rel. Utilities Comm'n v. Carolina Coach Co., 269 N.C. 717, 153 S.E.2d 461 (1967).

§ 62-112. Effective date, suspension and revocation of franchises; dormant motor carrier franchises.

(c) The failure of a common carrier or contract carrier of passengers or property by motor vehicles to perform any transportation for compensation under the authority of its certificate or permit for a period of 30 consecutive days shall be prima facie evidence that said franchise is dormant and the public convenience and necessity is no longer served by such common carrier certificate or that the needs of a contract shipper are no longer served by such a contract carrier. Upon finding after notice and hearing that no such service has been performed for a period of 30 days the Commission is authorized to find that the franchise is dormant and to cancel the certificate or permit of such common or contract carrier. The Commission in its discretion may give consideration in such finding to other factors affecting the performance of such service, including seasonal requirements of the passengers or commodities authorized to be transported, the efforts of the carrier to make its services known to the public or to its contract shipper, the equipment and other facilities maintained by the carrier for performance of such service, and the means by which such carrier holds itself out to perform such service. A proceeding may be brought under this section by the Commission on its own motion or upon the complaint of any shipper or any other carrier. The franchise of a motor carrier may be cancelled under the provisions of this section in any proceeding to sell or transfer or otherwise change control of said franchise brought under the provisions of G.S. 62-111, upon finding of dormancy as provided in this section. Any motor carrier who has obtained authority to suspend operations under the provisions of G.S. 62-112 (b) (5) and the rules of the Utilities Commission issued thereunder shall not be subject to cancellation of its franchise under this section during the time such suspension of operations is authorized. In determining whether such carrier has made reasonable efforts to perform service under said franchise the Commission may in its discretion give consideration to disabilities of the carrier including death of the owner and physical disabilities. (1947, c. 1008, s. 23; 1949, c. 1132, s. 21; 1963, c. 1165, s. 1; 1967, c. 1201.)

Editor's Note. — The 1967 amendment, effective Jan. 1, 1968, added subsection (c).

As the rest of the section was not affected by the amendment, it is not set out.

Applied in Jones v. State Farm Mut. Auto. Ins. Co., 270 N.C. 454, 155 S.E.2d 118 (1967).

§ 62-114. Contract carriers; issuance of permits; terms and conditions.—When the Commission issues a permit to any contract carrier, it shall

specify in the permit, or amendment thereto, the business of the contract carrier covered thereby and the scope thereof and shall attach to it, at the time of issuance, and from time to time thereafter, such reasonable terms, conditions, and limitations consistent with the character of the holder as a contract carrier as are necessary to carry out, with respect to the operations of such carrier, the requirements established by the Commission under § 62-261 provided, that the permit shall list the name of all contract parties the carrier is authorized to serve, and no additions or substitutions of contracts shall be made without approval of the Commission, and the Commission may adopt rules and regulations limiting the number of contract parties served by a contract carrier so that contract carriers shall not hold themselves out to serve in the manner of common carriers. (1947, c. 1008, s. 13; 1949, c. 1132, s. 12; 1963, c. 1165, s. 1; 1967, c. 1094, s. 3.)

Editor's Note. — The 1967 amendment, effective Sept. 30, 1967, rewrote the proviso at the end of this section.

§ 62-118. Abandonment and reduction of service.

Waste of a utility's manpower or other resources, with no substantial resulting benefit to the public, is not in the public interest and is not required. State ex rel. Utilities Comm'n v. Atlantic Coast Line R.R., 268 N.C. 242, 150 S.E.2d 386 (1966).

A railroad may not be denied the right to curtail or abandon a service for which there is no substantial public need, even though, upon its entire business, the company is earning a fair rate of return. State ex rel. Utilities Comm'n v. Atlantic Coast Line R.R., 268 N.C. 242, 150 S.E.2d 386 (1966).

Though prosperous, a railroad or other utility company may not be denied the right to effect economies in its operation, so as to increase its earnings, unless it may reasonably be found, upon the evidence before the Commission, that the public convenience and necessity requires the continuation of the service in question. An occasional inconvenience to a shipper, which is trivial in comparison with the saving to the railroad from the elimination of the service, will not suffice to show such public convenience and necessity. State ex rel. Utilities Comm'n v. Atlantic Coast Line R.R., 268 N.C. 242, 150 S.E.2d 386 (1966).

But It May Be Required to Keep Open Station Required by Public Convenience and Necessity.—A railroad may be required to keep a station open, with an agent in attendance, if the public convenience and necessity requires such service, even though this can be done only at a loss to the railroad, provided such loss is not so great as to be unreasonable in comparison with the public's benefit from the service. State ex rel. Utilities Comm'n v. Atlantic Coast Line R.R., 268 N.C. 242, 150 S.E.2d 386 (1966).

And It May Not Substantially Reduce Hours Station Is Open without Commission's Order.—A liberal construction of §§ 62-2, 62-32, 62-131, 62-247, and this section, so as to effectuate the policy of the State as therein declared, compels the conclusion that when a railroad corporation has established and maintained a freight depot or passenger station pursuant to the order of the Commission, or has established and maintained for a year or more such depot or station on its own initiative, it may not, without first obtaining an order from the Commission authorizing it to do so, substantially reduce the number of hours per day during which such station shall be kept open for the service of the public and attended by an agent of the railroad. State ex rel. Utilities Comm'n v. Atlantic Coast Line R.R., 268 N.C. 242, 150 S.E.2d 386 (1966).

But Commission May Not Withhold Approval of Reduction Unreasonably.—When a railroad company applies for an order authorizing it to substantially reduce the number of hours per day during which a depot or station shall be kept open and attended by an agent, the Commission may not withhold its approval unreasonably and arbitrarily. It may deny such permission only after a hearing and only if it finds and concludes, upon competent, material and substantial evidence in view of the entire record, both that the public convenience and necessity requires the station or depot to be so kept open for a greater portion of the day, and that the railroad, by so doing, will not incur costs out of proportion to any benefit to the public. State ex rel. Utilities Comm'n v. Atlantic Coast Line R.R., 268 N.C. 242, 150 S.E.2d 386 (1966).

ARTICLE 6A.

Radio Common Carriers.

§ **62-119. Powers of Commission generally; definitions.**—The North Carolina Utilities Commission shall exercise over and in relation to radio common carriers the powers conferred by this article.

(1) The word "Commission" when used in this article means the North Carolina Utilities Commission.

(2) The word "Commissioners" when used in this article means the Commissioners of the North Carolina Utilities Commission.

(3) The term "radio common carriers" when used in this article includes every corporation, company, association, partnership and persons and lessees, trustees, or receivers, appointed by any court whatsoever owning, operating or managing a radio common carrier engaged in the business of providing a service of one-way or two-way radio communications and licensed as a miscellaneous common carrier by the Federal Communications Commission, but not engaged in the business of providing a public land line message telephone service or a public message telegraph service. The terms "telephone or telegraph utilities," "telephone or telegraph company," or a "person operating telegraph or telephone lines" when used in this chapter, shall not be construed as including radio common carriers. (1969, c. 766.)

§ **62-120. Certificate of convenience and necessity required; exceptions; rules and regulations.**—No radio common carrier shall begin, or continue, the construction or operation of any radio system, or any extension thereof, or acquire ownership or control thereof either directly or indirectly without first obtaining from the Public Utilities Commission a certificate that the present or future public convenience and necessity requires or will require such construction, operation or acquisition; provided this article shall not require, nor shall it be so construed as to require, any such carrier to secure a certificate for an extension within any authorized service area within which such person has heretofore lawfully commenced operations, or for any extension within or to territory already served by such carrier, necessary in the ordinary course of business, or for substitute facilities within or to any authorized service area or territory already served by such carrier, or for any extension into territory contiguous to that already served by such carrier and not receiving similar service from another such carrier when no certificate of convenience and necessity has been issued to or applied for by any other radio common carrier, or for the acquisition and operation of any plant or system heretofore constructed or hereafter constructed under authority of a certificate of convenience and necessity hereafter issued. The Commissioners are hereby authorized to prescribe appropriate and reasonable rules and regulations governing the issuance of such certificates. (1969, c. 766.)

§ **62-121. Issuance of certificate for carrier licensed by Federal Communications Commission.**—Any person not presently franchised or certificated by the North Carolina Utilities Commission as a radio common carrier but engaged in the operation of any radio common carrier licensed by the Federal Communications Commission on June 11, 1969 shall receive a certificate of convenience and necessity from the North Carolina Utilities Commission authorizing such person to continue the operation of such radio common carrier in the territory professed to be served by such person on June 11, 1969, if, within thirty days after June 11, 1969, such person shall file with the Commission an application for such certificate, including copies of any license or licenses issued by the Federal Communications Commission to such person, showing the area professed to be served by such person. (1969, c. 766.)

§ **62-122. Commission may set and regulate rates.**—The Commission shall have the power and authority to set and regulate rates charged to the public by radio common carriers. (1969, c. 766.)

§ **62-123. Granting of certificate for operation in established service area of another carrier.**—The Commission shall not grant a certificate for a proposed radio common carrier operation or extension thereof into the established service area which will be in competition with or duplication of any other radio common carrier unless it shall first determine that the existing service is inadequate to meet the reasonable needs of the public and that the person operating the same is unable to or refuses or neglects after hearing on reasonable notice to provide reasonably adequate service. (1969, c. 766.)

§ **62-124. Article not applicable to mobile radio telephone service.**—The provisions of this article relate only to "radio common carriers" as defined herein and are distinguishable from mobile radio telephone service offered by land line telephone or telegraph utilities regulated by the Commission. (1969, c. 766.)

ARTICLE 7.

Rates of Public Utilities

§ 62-130. Commission to make rates for public utilities.

General Rate-Fixing Power.—This section, in general terms, directs the Commission to establish just and reasonable rates for all utilities. Southern Bell Tel. & Tel. Co. v. Clayton, 266 N.C. 687, 147 S.E.2d 195 (1966).

Duty to Fix Rates.—The General Assembly has delegated to the Commission, and not to the courts, the duty and power to establish rates for public utilities. State ex rel. North Carolina Util. Comm'n v. Westco Tel. Co., 266 N.C. 450, 146 S.E.2d 487 (1966).

§ 62-131. Rates must be just and reasonable; service efficient.

Cross Reference.—See note to § 62-118.

The term "public utility" in subsection (b) includes a railroad corporation. State ex rel. Utilities Comm'n v. Atlantic Coast Line R.R., 268 N.C. 242, 150 S.E.2d 386 (1966).

§ 62-132. Rates established under this chapter deemed just and reasonable; remedy for collection of unjust or unreasonable rates.

Stated in State ex rel. Utilities Comm'n v. Nello L. Teer Co., 266 N.C. 366, 146 S.E.2d 511 (1966).

§ 62-133. How rates fixed.

This section merely codified the former statute as interpreted by Supreme Court. State ex rel. Utilities Comm'n v. Lee Tel. Co. 263 N.C. 702, 140 S.E.2d 319 (1965).

The responsibility for fixing rates rests with the Utilities Commission and not on the Supreme Court. However, there is nothing in the statutes that requires the Commission to accept the rate or rates proposed, or to reject them altogether. State ex rel. Utilities Comm'n v. Lee Tel. Co., 263 N.C. 702, 140 S.E.2d 319 (1965).

Manner of Arriving at Rate.—In accord with 2nd paragraph in original. See State ex rel. North Carolina Util. Comm'n v. Westco Tel. Co., 266 N.C. 450, 146 S.E.2d 487 (1966).

Necessarily, what is a "just and reasonable" rate which will produce a fair return on the investment depends on (1) the value of the investment—usually referred to in rate-making cases as the rate base—which earns the return; (2) the gross income received by the applicant from its authorized operations; (3) the amount to be deducted for operating expenses, which must include the amount of capital investment currently consumed in rendering the service; and (4) what rate constitutes a just and reasonable rate of return on the predetermined rate base. When these essential ultimate facts are established by findings of the Commission, the amount of additional gross revenue required to produce the desired net return becomes a mere matter of calculation. State ex rel. Utilities Comm'n v. Lee Tel. Co., 263 N.C. 702, 140 S.E.2d 319 (1965).

Commission Must Consider Requirements of Section in Arriving at Value of Property.—In arriving at the fair value of a public utility's property used and useful in providing the service rendered to its customers, the Commission is charged with the duty to consider the requirements set forth in this section, as well as other relevant factors. State ex rel. North Carolina Util. Comm'n v. Westco Tel. Co., 266 N.C. 450, 146 S.E.2d 487 (1966).

Value of Property Determined as of End of Trial Period.—The Commission is required under subsection (c) to determine the fair value of the utility's property as of the end of the trial period based on the plant and equipment in operation at that time. State ex rel. North Carolina Util. Comm'n v. Westco Tel. Co., 266 N.C. 450, 146 S.E.2d 487 (1966).

Trended Cost Evidence Deserves Weight.—In these times of increased construction costs and decreased dollar value, trended cost evidence deserves weight in proportion to the accuracy of the tests and their intelligent application. The objections to such evidence apparently came from jurisdictions where the base rate is fixed at "book value" or "original cost" rather than present value. Of course, the book value or original cost can be ascertained with exactness from the books and records. State ex rel. Utilities Comm'n v. Lee Tel. Co., 263 N.C. 702, 140 S.E.2d 319 (1965).

When Necessary to Fix Present Value and Replacement Is Expensive.—Trended cost is useful only when it becomes necessary to fix the present value of facilities constructed when the cost was low and replacement has become expensive. State ex rel. Utilities Comm'n v. Lee Tel. Co., 263 N.C. 702, 140 S.E.2d 319 (1965).

Although Such Evidence Is Not Conclusive.—The trended cost takes into account the type of facility, its age, its original and replacement cost, terrain, location, its probable useful life, and other factors. Such evidence is not conclusive but it does appear to be a useful guide in determining value of facilities. State ex rel. Utilities Comm'n v. Lee Tel. Co., 263 N.C. 702, 140 S.E.2d 319 (1965).

In fixing intrastate rates, etc.—

When a company operates in two or more states, the operations are treated as separate businesses for the purpose of rate regulation. State ex rel. Utilities Comm'n v. Lee Tel. Co., 263 N.C. 702, 140 S.E.2d 319 (1965).

The reasonableness of the rates to be fixed by the State must be decided with reference exclusively to what is just and reasonable in respect of domestic business. State ex rel. Utilities Comm'n v. Lee Tel. Co., 263 N.C. 702, 140 S.E.2d 319 (1965).

An inadequate return in Virginia would not of itself justify a rate increase in North Carolina, nor would a high rate of return in Virginia justify less than a fair and reasonable rate in North Carolina. State ex rel. Utilities Comm'n v. Lee Tel. Co., 263 N.C. 702, 140 S.E.2d 319 (1965).

The Utilities Commission is empowered and directed to make reasonable and just rates as applied to the distribution and sale of power in this State and not otherwise, and such power cannot be directly controlled or weakened by conditions existent in other states, either from the action or nonaction of official bodies there, or the dealings between private parties. To hold otherwise would, in its practical operation, be to withdraw or nullify the powers that this section professes to confer and should not for a moment be entertained. State ex rel. Utilities Comm'n v. Lee Tel. Co., 263 N.C. 702, 140 S.E.2d 319 (1965).

The Utilities Commission of this State does not have the right to fix less than a reasonable or fair rate of return on a telephone company's investment in North Carolina because the utilities commission in Virginia may have fixed rates in Virginia which, in the opinion of the Utilities Commission in this State, gives the company a reasonable return on its entire properties when its Virginia and North Carolina revenues are combined. State ex rel. Utilities Comm'n v. Lee Tel. Co., 263 N.C. 702, 140 S.E.2d 319 (1965).

Reasonableness of Rate of Return Depends on Whether Property Is Fairly Valued.—Whether a 4%, 5%, or 6% return is just and reasonable depends very largely on whether the Commission has placed a fair value on the property of the utility which is used and useful in producing its revenue. State ex rel. Utilities Comm'n v. Lee Tel. Co., 263 N.C. 702, 140 S.E.2d 319 (1965).

Cited in In re North Carolina Fire Ins. Rating Bureau, 275 N.C. 15, 165 S.E.2d 207 (1969).

§ 62-134. Change of rates; notice; suspension and investigation.

Petition Determined on Basis of Facts Existing When Increase Effective.—The Utilities Commission must determine a petition for an increase in telephone rates on the basis of the facts existing at the time such increase is effective. State ex rel. North Carolina Util. Comm'n v. Western Carolina Tel. Co., 260 N.C. 369, 132 S.E.2d 873 (1963).

And Commission Cannot Consider Subsequent Events.—The Utilities Commission cannot consider events occurring subsequent to the date certain rates went into effect, to ascertain what were proper rates on that date. State ex rel. North Carolina Util. Comm'n v. Western Carolina Tel. Co., 260 N.C. 369, 132 S.E.2d 873 (1963).

New Rate on Changed Conditions Relates to Date of Change.—If a subsequent change in conditions warrants a new rate, such new rate must relate to the date of change. State ex rel. North Carolina Util. Comm'n v. Western Carolina Tel. Co., 260 N.C. 369, 132 S.E.2d 873 (1963).

And Parties Must Be Given Hearing on Effect of Change.—The parties must be accorded an opportunity to be heard with respect to the effect, if any, a subsequent change in conditions had on the rate structure, and a denial of such opportunity would be a deprivation of due process. State ex rel. North Carolina Util. Comm'n v. Western Carolina Tel. Co., 260 N.C. 369, 132 S.E.2d 873 (1963).

Transfer of Exchanges during Pendency of Petition.—Where a telephone company, during the pendency of its petition for an increase in rates, transfers part of its exchanges to a subsidiary, the Utilities Commission, in the exercise of its discretion, may make the subsidiary a formal party and treat the original petition as a joint petition for a uniform system of rates; or it may make the subsidiary a party and fix proper rates for the subsidiary's exchanges and for the original petitioner's exchanges. State ex rel. North Carolina Util. Comm'n v. Western Carolina Tel. Co., 260 N.C. 369, 132 S.E.2d 873 (1963).

Applied in State ex rel. North Carolina Util. Comm'n v. Southern Ry., 267 N.C. 317, 148 S.E.2d 210 (1966).

§ 62-138. Utilities to file rates, service regulations and service contracts with Commission; publication.

(f) Under such rules as the Commission may prescribe, every electric membership corporation operating within this State shall file with the Commission, for information purposes, all rates, schedules of rates, charges, service regulations, and forms of service contracts, used or to be used within the State, and shall keep copies of such schedules, rates, charges, service regulations, and contracts open to public inspection. (1899, c. 164, s. 7; Rev., s. 1109; 1907, c. 217, s. 5; C. S., s. 1074; 1933, c. 134, s. 8; c. 307, s. 4; 1941, c. 97; 1947, c. 1008, s. 25; 1949, c. 1132, s. 23; 1959, c. 209; 1963, c. 1165, s. 1; 1965, c. 287, s. 7.)

Editor's Note. — The 1965 amendment added subsection (f).

As only subsection (f) was affected by the amendment, the rest of the section is not set out.

§ 62-140. Discrimination prohibited.

(c) No public utility shall offer or pay any compensation or consideration or furnish any equipment to secure the installation or adoption of the use of such utility service except upon filing of a schedule of such compensation or consideration or equipment to be furnished and approval thereof by the Commission, and offering such compensation, consideration or equipment to all persons within the same classification using or applying for such public utility service; provided, in considering the reasonableness of any such schedule filed by a public utility the Commission shall consider, among other things, evidence of consideration or compensation paid by any competitor, regulated or nonregulated, of the public utility to secure the installation or adoption of the use of such competitor's service. Provided, further, that nothing herein shall prohibit a public utility from carrying out any contractual commitment in existence at the time of the enactment hereof, so long as such program does not extend beyond December 31, 1963. For the purpose of this subsection, "public utility" shall include any electric membership corporation operating within this State, and the terms "utility service" and "public utility service" shall include the service rendered by any such electric membership corporation. (1899, c. 164, s. 2, subsecs. 3, 5; Rev., s. 1095; 1913, c. 127, s. 6; C. S., s. 1054; 1933, c. 134, s. 8; c. 307, s. 6; 1941, c. 97; 1963, c. 1165, s. 1; 1965, c. 287, s. 8.)

Editor's Note.—

The 1965 amendment added the last sentence in subsection (c).

As only subsection (c) was affected by the amendment, the rest of the section is not set out.

Subsection (a) is similar to § 3 of the Interstate Commerce Act. State ex rel. Utilities Comm'n v. Nello L. Teer Co., 266 N.C. 366, 146 S.E.2d 511 (1966).

Common Law.—

The duty now imposed by this section upon privately owned distributors and sellers of electric power not to discriminate in service or rates is merely a development of the common-law obligation of equal and undiscriminating service. Dale v. City of Morganton, 270 N.C. 567, 155 S.E.2d 136 (1967).

There must be no unreasonable discrimination between those receiving the same kind and degree of service. State ex rel. Utilities Comm'n v. Nello L. Teer Co., 266 N.C. 366, 146 S.E.2d 511 (1966).

But Rates May Differ under Varying Conditions. — The charging of different rates for service rendered under varying conditions and circumstances is not unlawful. State ex rel. Utilities Comm'n v. Nello L. Teer Co., 266 N.C. 366, 146 S.E.2d 511 (1966).

Provided Differences in Service or Conditions Are Substantial. — There must be substantial differences in service or conditions to justify difference in rates. State ex rel. Utilities Comm'n v. Nello L. Teer Co., 266 N.C. 366, 146 S.E.2d 511 (1966).

Any Substantial Ground for Distinguishing between Customers Is Material Factor. —Any matter which presents a substantial difference as a ground for distinction between customers, such as quantity used, time of use, or manner of service, is a material factor in the determination of rates. State ex rel. Utilities Comm'n v. Nello L. Teer Co., 266 N.C. 366, 146 S.E.2d 511 (1966).

Rates for Shipments from Different Origins Need Not Be Equal.—Subsection (a) of this section does not require an equality of rates where the shipments are from different points of origin to the same destination even though the distances be equal or approximately so. State ex rel. Utilities Comm'n v. Nello L. Teer Co., 266 N.C. 366, 146 S.E.2d 511 (1966).

Right of City to Refuse Service Is Same as Private Company's.—The right of a municipal corporation operating a plant for the distribution and sale of electricity to its inhabitants to refuse to serve is neither greater nor less than that of a privately owned electric power company to do so. Dale v. City of Morganton, 270 N.C. 567, 155 S.E.2d 136 (1967).

City May Not Deprive Inhabitant of Service to Compel Obedience to Police Regulations.—A city may not deprive an inhabitant, otherwise entitled thereto, of light, water, or other utility service as a means of compelling obedience to its police regulations, however valid and otherwise enforceable those regulations may be. Dale v. City of Morganton, 270 N.C. 567, 155 S.E.2d 136 (1967).

§ 62-146. Rates and service of motor common carriers.

"Operating Ratios".—The operating ratios for the movement of tobacco in intrastate traffic cannot be determined with mathematical exactitude. But the carriers can no doubt approximate the rateable proportion of their operating ratios from tobacco movements in intrastate traffic and offer evidence of other facts and circumstances in respect thereto sufficient in probative force to enable the Commission to make findings of fact and to issue such orders as the findings of fact may warrant. State ex rel. North Carolina Util. Comm'n v. Attorney Gen., 2 N.C. App. 657, 163 S.E.2d 638 (1968).

An operating ratio of one hundred percent means that for every dollar of freight revenue received, the carrier spends a dollar in operating expenses. When the operating ratio exceeds one hundred percent, it means that the expenses exceed the revenues. The lower the operating ratio, the more profitable the operation is to the carrier. State ex rel. North Carolina Util. Comm'n v. Attorney Gen., 2 N.C. App. 657, 163 S.E.2d 638 (1968).

Carriers have legal right to contract inter se, and the law encourages cooperation and agreements between them respecting their service to the public. State ex rel. North Carolina Util. Comm'n v. Carolina Coach Co., 261 N.C. 384, 134 S.E.2d 689 (1964).

ARTICLE 9.

Acquisition and Condemnation of Property.

§ 62-183. Grant of eminent domain; exception as to mills and water powers.

Editor's Note.—

For article on remedies for trespass to land in North Carolina, see 47 N.C.L. Rev. 334 (1969).

§ 62-187. Proceedings as under eminent domain.

Applied in Carolina Power & Light Co. v. Briggs, 268 N.C. 158, 150 S.E.2d 16 (1966).

§ 62-190. Right of eminent domain conferred upon pipeline companies; other rights.

Editor's Note.—

For an article urging revision and recodification of North Carolina's eminent domain laws, see 45 N.C.L. Rev. 587 (1967).

ARTICLE 11.

Railroads.

§ 62-220. Powers of railroad corporations.

(1)

Editor's Note.—For article on remedies for trespass to land in North Carolina, see 47 N.C.L. Rev. 334 (1969).

(2)

Editor's Note.—

For an article urging revision and recodification of North Carolina's eminent domain laws, see 45 N.C.L. Rev. 587 (1967).

§ 62-223. Intersection with highways.

Editor's Note. — For an article urging revision and recodification of North Carolina's eminent domain laws, see 45 N.C.L. Rev. 587 (1967).

§ 62-224. Obstructing highways; defective crossings; notice; failure to repair after notice misdemeanor.

A railroad grade crossing is in itself a warning of danger. Price v. Seaboard Air Line R.R., 274 N.C. 32, 161 S.E.2d 590 (1968).

Duty to Maintain, etc.—

The duty of a railroad company with respect to the maintenance of a crossing over its track, where its track has been constructed over an established road, whether public or private, is well settled. The duty is prescribed by this section and has been recognized and enforced by the Supreme Court in numerous decisions. Price v. Seaboard Air Line R.R., 274 N.C. 32, 161 S.E.2d 590 (1968).

Duty of Traveler to Exercise Due Care.—A railroad company is under duty to give travelers timely warning of the approach of its train to a public crossing, but its failure to do so does not relieve a traveler of his duty to exercise due care for his own safety, and the failure of a traveler to exercise such care bars recovery when such failure is a proximate cause of the injury. Price v. Seaboard Air Line R.R., 274 N.C. 32, 161 S.E.2d 590 (1968).

Reciprocal Duty to Keep Proper Lookout and Exercise Care.—In approaching a grade crossing, both the trainmen and travelers upon the highway are under reciprocal duty to keep a proper lookout and exercise that degree of care which a reasonably prudent person would exercise under the circumstances to avoid an accident at the crossing. Price v. Seaboard Air Line R.R., 274 N.C. 32, 161 S.E.2d 590 (1968).

Yielding Right-of-Way.—Where a railroad track crosses a public highway, though a traveler and a railroad have equal rights to cross, the traveler must yield the right-of-way to the railroad company in the ordinary course of its business. Price v. Seaboard Air Line R.R., 274 N.C. 32, 161 S.E.2d 590 (1968).

Highway Commission May Require Railroad to Widen Crossings.—Section 60-43, prior to its repeal and reenactment as this section, empowered the Highway Commission, upon the widening of a highway, to require a railroad company to widen its highway crossings so as to conform to the increased width of the highway. Atlantic Coast Line R.R. v. State Highway Comm'n, 268 N.C. 92, 150 S.E.2d 70 (1966).

And Is Not Subject to Suit for Railroad's Costs in Widening. — The State Highway Commission is not subject to suit on the theory of unjust enrichment to recover costs incurred by a railroad company in widening its grade crossings pursuant to lawful order of the Highway Commission, there being no contention of any "taking" by the Commission, since there is no statutory provision authorizing suit in such instance, and the right to bring a common-law action against the Highway Commission where there is no statutory remedy is applicable solely where there has been a "taking" of property by the Commission. Atlantic Coast Line R.R. v. State Highway Comm'n, 268 N.C. 92, 150 S.E.2d 70 (1966).

§ 62-231. Union depots required under certain conditions.

Editor's Note. — For an article urging revision and recodification of North Carolina's eminent domain laws, see 45 N.C.L. Rev. 587 (1967).

§ 62-247. Commission to establish and regulate stations for freight and passengers; abandonment of station or diminution of accommodations.

Cross Reference.—
See note to § 62-118.

ARTICLE 12.

Motor Carriers

§ 62-260. Exemptions from regulations.—(a) Nothing in this chapter shall be construed to include persons and vehicles engaged in one or more of the following services by motor vehicle if not engaged at the time in the transportation of other passengers or other property by motor vehicle for compensation:

(1) Transportation of passengers or property for or under the control of the United States government, or the State of North Carolina, or any political subdivision thereof, or any board, department or commission of the State, or any institution owned and supported by the State;

(2) Transportation of passengers by taxicabs when not carrying more than nine (9) passengers or transportation by other motor vehicles performing bona fide taxicab service and not carrying more than nine (9) passengers in a single vehicle at the same time when such taxicab or other vehicle performing bona fide taxicab service is not operated on a regular route or between termini; provided, no taxicab while operating over the regular route of a common carrier outside of a municipality and a residential and commercial zone adjacent thereto, as such zone may be determined by the Commission as provided in (8) of this subsection, shall solicit passengers along such route, but nothing herein shall be construed to prohibit a taxicab operator from picking up passengers along such route upon call, sign or signal from prospective passengers;

(3) Transportation by motor vehicles owned or operated by or on behalf of hotels while used exclusively for the transportation of hotel patronage between hotels and local railroad or other common carrier stations;

(4) Transportation of passengers to and from airports and passenger air-line terminals when such transportation is incidental to transportation by aircraft;

(5) Transportation of passengers by trolley buses operated by electric power

derived from a fixed overhead wire, furnishing local passenger transportation similar to street railway service;

(6) Transportation by motor vehicles used exclusively for the transportation of passengers to or from religious services;

(7) Transportation of bona fide employees of an industrial plant to and from their regular employment;

(8) Transportation of passengers when the movement is within a municipality exclusively, or within contiguous municipalities and within a residential and commercial zone adjacent to and a part of such municipality or contiguous municipalities; provided, the Commission shall have power in its discretion, in any particular case, to fix the limits of any such zone;

(9) Transportation in bulk of sand, gravel, dirt, debris, and other aggregates, or ready-mixed paving materials for use in street or highway construction or repair;

(10) Transportation of newspapers;

(11) Transportation of insecticides, fungicides and the ingredients thereof; transportation of farm, dairy or orchard products from farm, dairy or orchard to warehouse, creamery, or other original storage or market;

(12) Transportation for and under the control of cooperative associations organized and operating under the Federal Agricultural Marketing Act, U.S.C.A. Title 12, § 1141(j), or under the State Cooperative Marketing Act, chapter 54, subchapter 5, General Statutes of North Carolina, as amended, or for any federation of such cooperative associations; provided, such federation possesses no greater powers or purposes than such cooperative associations;

(13) Transportation of livestock, or fish, including shellfish and shrimp, but not including manufactured products thereof;

(14) Transportation of raw products of the forest, including firewood, logs, crossties, stave bolts, pulpwood, and rough lumber, but not including manufactured products therefrom;

(15) Pickup, delivery, and transfer service for railroads, express companies, water carriers and motor carriers in connection with their respective line-haul services within the commercial zone of any municipality, as defined by the Commission between their terminals and places of collection or delivery of freight;

(16) Transportation by a bona fide private carrier, as defined in § 62-3 (22);

(17) Transportation of any commodity anywhere of a character not hauled in the ordinary course of business by a common carrier by motor vehicle.

(f) Notwithstanding the exemptions for transportation of passengers and property provided under subsections (a) through (e) of this section, all motor carriers transporting passengers for compensation under said exemptions or under any special exemptions granted by the Utilities Commission under G.S. 62-261 shall be subject to the same requirements for security for protection of the public as are established for regulated motor common carriers by the rules of the Utilities Commission pursuant to G.S. 62-268, and all such motor carriers transporting for hire under said exemption provisions shall further be subject to the same requirements for safety of operation of said motor vehicles as are required of regulated motor common carriers under the provisions of this chapter and the regulations of the Commission adopted pursuant thereto. The Commission is authorized to promulgate rules and regulations for the enforcement of said requirements in the case of all such exempt operations, and the officers and agents of the Commission shall have full authority to inspect said exempt vehicles and to apply all enforcement regulations and penalties for violation of said security regulations and safety regulations as in the case of regulated motor carriers.

(g) The owners of all motor vehicles used in any transportation for compensation which is declared to be exempt under this section shall register such operation with the Utilities Commission and shall secure from the Utilities Commission a certificate of exemption. (1947, c. 1008, s. 4; 1949, c. 1132, s. 5; 1951, c. 987, s. 1; 1953, c. 1140, s. 2; 1955, c. 1194, ss. 1, 2; 1959, c. 102; c. 639, s. 14; 1963, c. 1165, s. 1; 1967, cc. 1135, 1203; 1969, c. 681.)

Editor's Note.—The first 1967 amendment, effective Feb. 15, 1968, added subsection (f). The second 1967 amendment added subsection (g).

The 1969 amendment, effective Sept. 15, 1969, substituted "nine (9)" for "six (6)" in two places in subdivision (2) of subsection (a).

As the rest of the section was not affected by the amendments, it is not set out.

Franchise for Limousine Service to Airport.—The provisions of §§ 160-1, 63-2, 63-49, 63-50, 63-53, and this section authorize a municipal corporation to award a franchise contract granting the right to provide limousine service to a municipal airport upon certain terms and conditions set forth in the franchise ordinance. Harrelson v. City of Fayetteville, 271 N.C. 87, 155 S.E.2d 749 (1967).

§ 62-261. Additional powers and duties of Commission applicable to motor vehicles.

(3) To prescribe qualifications and maximum hours of service of drivers and their helpers, and rules regulating safety of operation and equipment; and in the interest of uniformity of intrastate and interstate rules and regulations applicable within the State with respect to maximum hours of service of vehicle drivers and their helpers, and safety of operation and equipment, the Utilities Commission may adopt and enforce the rules and regulations adopted and promulgated by the United States Department of Transportation with respect thereto, insofar as the Utilities Commission finds the same to be practical and advantageous for application in this State and not in conflict with this article. In order to promote safety of operation of motor carriers, the Utilities Commission may avail itself of the assistance of any other agency of the State having special knowledge of such matters and it may make such investigations and tests as may be deemed necessary to promote safety of equipment and operation of vehicles upon the highways.

(7) The Commission and its duly authorized inspectors and agents shall have authority at any time to enter upon the premises of any motor carrier, subject to the provisions of this article, for the purpose of inspecting any motor vehicles and equipment used by such motor carriers in the transportation of passengers and property, and to prohibit the use by any motor carrier of any motor vehicle or parts thereof or equipment thereon adjudged by such agents and inspectors to be unsafe for use in the transportation of passengers and property upon the public highways of this State; and when such agents or inspectors shall discover any motor vehicle of such motor carrier in actual use upon the highways in the transportation of passengers and property to be unsafe or any parts thereof or any equipment thereon to be unsafe, such agents or inspectors may, if they are of the opinion that further use of such vehicle, parts or equipment are imminently dangerous, stop such vehicle and require the operator thereof to discontinue its use and to substitute therefor a safe vehicle, parts or equipment at the earliest possible time and place, having regard for both the convenience and the safety of the passengers and property. When an inspector or agent stops a motor vehicle on the highway, under authority of this section, and the motor vehicle is in operative condition and its further movement

is not dangerous to the passengers and property and to the users of the highways, it shall be the duty of the inspector or agent to guide the vehicle to the nearest point of substitution or correction of the defect. Such agents or inspectors shall also have the right to stop any motor vehicle which is being used upon the public highways for the transportation of passengers and property by a motor carrier subject to the provisions of this article and to eject therefrom any driver or operator who shall be operating or be in charge of such motor vehicle while under the influence of intoxicating liquors. It shall be the duty of all inspectors and agents of the Commission to make a written report, upon a form prescribed by the Commisssion, of inspections of all motor equipment and a copy of each such written report, disclosing defects in such equipment, shall be served promptly upon the motor carrier operating the same, either in person by the inspector or agent or by mail. Such agents and inspectors shall also make and serve a similar written report in cases where a motor vehicle is operated in violation of the laws of this State or of the orders, rules and regulations of the Commission.

(1969, c. 723, s. 2; c. 763.)

Editor's Note.—The first 1969 amendment, effective Sept. 15, 1969, substituted "United States Department of Transportation" for "Interstate Commerce Commission" near the middle of subdivision (3).

The second 1969 amendment, effective Sept. 15, 1969, inserted "and property" following "passengers" in six places in subdivision (7).

As the rest of the section was not changed by the amendments, only subdivisions (3) and (7) are set out.

§ 62-262. Applications and hearings.

(d) Any motor carrier desiring to protest the granting of an application for a certificate or permit, in whole, or in part, may become a party to such proceedings by filing with the Commission, not less than ten (10) days prior to the date fixed for the hearing, unless the time be extended by order of the Commission, its protest in writing under oath, containing a general statement of the grounds for such protest and the manner in which the protestant will be adversely affected by the granting of the application, in whole or in part. Such protestant may also set forth in his protest its proposal, if any, to render either alone or in conjunction with other motor carriers, the service proposed by the applicant, either in whole or in part. Upon the filing of such protest it shall be the duty of the protestant to file three copies with the Commission, and the protestant shall certify that a copy of said protest has been delivered or mailed to the applicant or applicant's attorney. When no protest is filed with the Commission within the time herein limited, or as extended by order of the Commission, the Commission may proceed to hear the application and make the necessary findings of fact and issue or decline to issue the certificate or permit applied for without further notice. Persons other than motor carriers shall have the right to appear before the Commission and give evidence in favor of or against the granting of any application and with permission of the Commission may be accorded the right to examine and cross-examine witnesses.

(1965, c. 214.)

Editor's Note. — The 1965 amendment substituted "protestant" for "applicant" preceding "shall certify" in the third sentence of subsection (d). As only subsection (d) was affected by the amendment, the rest of the section is not set out.

The convenience and necessity, etc.—The granting of franchise authority for the operation of buses over the highways of this State, for the transportation of persons and property for compensation, must be predicated upon public convenience and necessity. State ex rel. North Carolina Util. Comm'n v. Carolina Coach Co., 261 N.C. 384, 134 S.E.2d 689 (1964).

Burden Is on Applicant to Show Public Convenience and Necessity.—The burden of proof is upon the applicant for franchise authority to show public convenience and necessity. State ex rel. North Carolina Util. Comm'n v. Carolina Coach Co., 261 N.C. 384, 134 S.E.2d 689 (1964).

What constitutes "public convenience and necessity" is primarily an administrative question with a number of imponderables to be taken into consideration, e.g., whether there is a substantial public need for the service; whether the existing carriers can reasonably meet this need, and whether it would endanger or impair the operations of existing carriers contrary to the public interest. State ex rel. Utilities Comm'n v. Queen City Coach Co., 4 N.C. App. 116, 166 S.E.2d 441 (1969).

The factors denominated as imponderables, to wit: Whether the existing carriers can reasonably meet the need for the service and whether the granting of the application would endanger or impair the operations of existing carriers contrary to the public interest, are not solely determinative of the right of the Commission to grant the application. Both are directed to the question of public convenience and necessity. Nevertheless, if the proposed operation under the certificate sought would seriously endanger or impair the operations of existing carriers contrary to the public interest, the certificate should not be issued. State ex rel. Utilities Comm'n v. Queen City Coach Co., 4 N.C. App. 116, 166 S.E.2d 441 (1969).

Findings of fact by the Commission are conclusive and binding upon the reviewing court when supported by competent, material and substantial evidence in view of the entire record. State ex rel. Utilities Comm'n v. Petroleum Transp., Inc., 2 N.C. App. 566, 163 S.E.2d 526 (1968).

What Constitutes a Contract Carrier.—See State ex rel. Utilities Comm'n v. Petroleum Transp., Inc., 2 N.C. App. 566, 163 S.E.2d 526 (1968).

Stated in State ex rel. Utilities Comm'n v. Carolina Tel. & Tel. Co., 267 N.C. 257, 148 S.E.2d 100 (1966).

§ **62-266. Interstate carriers.**—(a) This article shall apply to persons and vehicles engaged in interstate commerce over the highways of this State, except insofar as the provisions of this article may be inconsistent with, or shall contravene, the Constitution or laws of the United States, and the Commission may, in its discretion, require such carriers to file with it copies of their respective interstate authority or register their exempt operation and registration of their vehicles operated in the State, and to observe such reasonable rules and regulations as the Commission may deem advisable in the administration of this article and for the protection of persons and property upon the highways of the State.

(c) Any person operating a common carrier motor vehicle in interstate commerce over the highways of this State without filing with the Utilities Commission a copy of its respective interstate authority and registering each vehicle operated in the State with the Utilities Commission in accordance with rules and regulations of the Utilities Commission shall be subject to a penalty of twenty-five ($25.00) dollars, which shall be added to the registration fees provided in G.S. 62-300 (8) and G.S. 62-300 (13), and said penalty shall be collected with said registration fee from any carrier operating on the highways of North Carolina without registering his interstate authority by inspectors and investigators of the Utilities Commission in accordance with rules and regulations duly adopted by the Utilities Commission before said vehicle shall be permitted to operate further upon the highways of North Carolina.

(d) No motor carrier shall operate or cause to be operated in interstate commerce in this State any vehicle until he has filed evidence of required insurance with the Utilities Commission and has been issued an identification stamp for such vehicle, which stamp must be attached to the approved uniform cab card and carried in the vehicle at all times. The identification stamp herein provided for shall be issued on an annual basis as of January 1st each year and shall be valid through February 1st the next succeeding year. When any person is discovered in this State, operating a vehicle in violation of this section, it shall be unlawful for anyone thereafter to operate said vehicle on the streets or highways of this State, except to remove it from the street or highway for purposes of parking or storing said vehicle until he shall pay to the Utilities Commission a penalty of twenty-five ($25.00) dollars. Any person denying his liability for such penalty may pay the same under protest. He may apply to the Utilities Commission for a hearing, and said hearing will be granted before a member of the

Commission or a hearing examiner within thirty (30) days after receipt of the request of such a hearing. If after said hearing the Commission determines that the person was not liable for the penalty, the amount collected shall be refunded to him. If after said hearing the Commission determines that the person was liable for said penalty, the person paying the penalty may bring an action in the Superior Court of Wake County against the Utilities Commission for refund of the penalty. No restraining order or injunction shall issue from any court of the State to restrain or enjoin the collection of the penalty or to permit the operation of said vehicle without payment of the penalty prescribed herein. (1947, c. 1008, s. 35; 1949, c. 1132, s. 32; 1963, c. 1165, s. 1; 1969, c. 645; c. 721, s. 1.)

Editor's Note.—The first 1969 amendment added subsections (c) and (d).

The second 1969 amendment, effective Sept. 15, 1969, inserted "or register their exempt operation" in subsection (a).

As subsection (b) was not changed by the amendments, it is not set out.

§ 62-268. Security for protection of public.

Applied in Jones v. State Farm Mut. Auto. Ins. Co., 270 N.C. 454, 155 S.E.2d 118 (1967).

Cited in American Nat'l Fire Ins. Co. v. Gibbs, 260 N.C. 681, 133 S.E.2d 669 (1963).

§ 62-274. Evidence; joinder of surety.

This Is Only Section as to Suit against Liability Insurer by Injured Person. — No North Carolina statute other than this section authorizes or prohibits a suit against a liability insurer alone or jointly with its insured by a person allegedly injured by the negligence of the insured. Jones v. State Farm Mut. Auto. Ins. Co., 270 N.C. 454, 155 S.E.2d 118 (1967).

§ 62-281. Safety regulations applicable to interstate common carrier vehicles.—The Utilities Commission is hereby authorized to promulgate highway safety rules and regulations for common carrier motor vehicles engaged in interstate commerce over the highways of North Carolina. (1969, c. 722, s. 1.)

Editor's Note. — Session Laws 1969, c. 722, s. 3, makes the act effective Sept. 15, 1969.

ARTICLE 14.

Fees and Charges.

§ 62-300. Particular fees and charges fixed; payment. — (a) The Commission shall receive and collect the following fees and charges, and no others:

(1) Twenty-five dollars ($25.00) with each notice of appeal to the Court of Appeals, and with each notice of application for a writ of certiorari.

(2) Twenty-five dollars ($25.00) with each application for a certificate or permit for motor carrier operating rights, and with each application to amend such certificate or permit so as to extend or enlarge the scope of operations thereunder, or as filing fee for each broker who applies for a brokerage license under the provisions of this chapter.

(3) Twenty-five dollars ($25.00) with each application for a general increase in rates, fares or charges. This fee shall not apply to applications for adjustments in particular rates, fares or charges for the purpose of eliminating inequities, preferences or discriminations.

(4) Twenty-five dollars ($25.00) with each application for discontinuance of train service, or for a change in or discontinuance of station facilities and with each application by a motor carrier of passengers for the abandonment or permanent or temporary discontinuance of transportation service previously authorized in a certificate.

(5) Twenty-five dollars ($25.00) with each application for a certificate of public convenience and necessity, or for any amendment thereto so as to extend or enlarge the scope of operations thereunder.

(6) Twenty-five dollars ($25.00) with each application for approval of the issuance of securities, or for approval of any sale, lease, hypothecation, lien, or other transfer of any property or operating rights of any carrier or public utility over which the Commission has jurisdiction.

(7) Ten dollars ($10.00) with each application, petition, or complaint not embraced in (2) through (6) of this section, wherein such application, petition, or complaint seeks affirmative relief against a carrier or public utility over which the Commission has jurisdiction. This fee shall not apply to applications for adjustments in particular rates, fares or charges for the purpose of eliminating inequities, preferences or discriminations; nor shall this fee apply to applications, petitions, or complaints made by any county, city or town; nor shall this fee apply to applications or petitions made by individuals seeking service from a public utility.

(8) One dollar ($1.00) for the registration with the Commission of each motor vehicle to be put in operation by a motor carrier operating under the jurisdiction of the Commission, and a fee of twenty-five cents (25¢) for the annual reregistration of each such motor vehicle.

(9) Thirty cents (30¢) for each page (8½ x 11 inches) of transcript of testimony, but not less than five dollars ($5.00) for any such transcript.

(10) Fifteen cents (15¢) for each one hundred words of copies of papers, orders, certificates or other records, but not less than one dollar ($1.00) for any such record, plus one dollar ($1.00) for certifying any such paper, order or record.

(11) Twenty cents (20¢) for each page reproduced by photostatic or similar process and for each page of an order which can be made available without the necessity of copying or reproduction.

(12) Twenty-five dollars ($25.00) for the filing with the Commission of the interstate motor carrier operating authority or for registration of interstate exempt operation of every motor carrier operating into, from, within, or through North Carolina and filed with the Commission under the provisions of G.S. 62-266, and five dollars ($5.00) for filing all subsequent amendments thereto to maintain said filing in a current status.

(13) One dollar ($1.00) for the registration with the Commission of each motor vehicle operated into, from, within or through North Carolina by interstate carriers and registered with the Commission under the provisions of G.S. 62-266, and a fee of twenty-five cents (25¢) for the annual reregistration of each such motor vehicle.

(1967, c. 1039; c. 1190, s. 7; 1969, c. 721, s. 2.)

Editor's Note.—The first 1967 amendment, effective Nov. 15, 1967, added subsections (a) (12) and (a) (13).

The second 1967 amendment, effective Oct. 1, 1967, substituted "Court of Appeals" for "superior court" in subsection (a) (1).

The 1969 amendment, effective Sept. 15, 1969, inserted "or for registration of interstate exempt operation" in subdivision (12) of subsection (a).

As only subsection (a) was affected by the amendments, the rest of the section is not set out.

ARTICLE 15.

Penalties and Actions.

§ **62-319. Riding on train unlawfully; venue.**—If any person, with the intention of being transported free in violation of law, rides or attempts to ride on top of any car, coach, engine or tender, on any railroad in this State, or on the drawheads between cars, or under cars, on truss rods, or trucks, or in any freight car, or on a platform of any baggage car, express car or mail car on any train, he shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding fifty dollars ($50.00) or imprisoned not more than thirty (30) days. Any person charged with a violation of this section may be tried in any county in this State through which such train may pass carrying such person, or in any county in which such violation may have occurred or may be discovered. (1899, c. 625; 1905, c. 32; Rev., s. 3748; C. S., s. 3508; 1963, c. 1165, s. 1.)

Editor's Note.—This section has been set out above to reflect a change in the catchline.

§ **62-326. Furnishing false information to the Commission; withholding information from the Commission.**—(a) Every person, firm or corporation operating under the jurisdiction of the Utilities Commission or who is required by law to file reports with the Commission who shall knowingly or wilfully file or give false information to the Utilities Commission in any report, reply, response, or other statement or document furnished to the Commission shall be guilty of a misdemeanor and shall be fined or imprisoned in the discretion of the court.

(b) Every person, firm, or corporation operating under the jurisdiction of the Utilities Commission or who is required by law to file reports with the Commission who shall wilfully withhold clearly specified and reasonably obtainable information from the Commission in any report, response, reply or statement filed with the Commission in the performance of the duties of the Commission or who shall fail or refuse to file any report, response, reply or statement required by the Commission in the performance of the duties of the Commission shall be guilty of a misdemeanor and shall be fined or imprisoned in the discretion of the court. (1969, c. 765, s. 1.)

Editor's Note. — Session Laws 1969, c. 765, s. 3, makes the act effective Sept. 15, 1969.

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE
Raleigh, North Carolina
October 24, 1969

I, Robert Morgan, Attorney General of North Carolina, do hereby certify that the foregoing 1969 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Division of Legislative Drafting and Codification of Statutes of the Department of Justice of the State of North Carolina.

ROBERT MORGAN
Attorney General of North Carolina

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